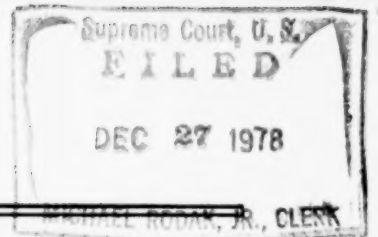


APPENDIX



In The
Supreme Court of the United States
October Term, 1978

No. 78-160

ROY TIBBALS WILSON, et al.,
Petitioners,
vs.
OMAHA INDIAN TRIBE, et al.,
Respondents.

No. 78-161

IOWA, et al.,
Petitioners,
vs.
OMAHA INDIAN TRIBE, et al.,
Respondents.

**ON WRITS OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE
EIGHTH CIRCUIT**

**PETITIONS FOR WRITS OF CERTIORARI FILED
JULY 28, 1978**

CERTIORARI GRANTED NOVEMBER 13, 1978

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UNITED STATES DISTRICT COURT

DOCKET ENTRIES

C 75-4024

UNITED STATES OF AMERICA,

Plaintiff,

vs.

WILSON, Roy Tibbals; LAKIN, Charles G.; LAKIN, Florence; R. G. P. INCORPORATED, an Iowa Corporation; JACKSON, Harold; PETERSON, Otis; TRAVELERS INSURANCE COMPANY and THE STATE OF IOWA,

Defendants.

CAUSE

Complaint to quiet title and for Injunctive relief.

ATTORNEYS

For Plaintiffs—

Evan L. Hultman
Robert L. Sikma

For Defendants—

Roy Tibbals Wilson,
R. G. P. Incorporated,
Harold Jackson and
Otis Peterson

Edson Smith

3535 Harney Street
Omaha Nebraska 68131

Thomas R. Burke
Suite 1900

First National Center
Omaha, Nebraska 68102

Jack W. Peters
501-511 Park Bldg.
Council Bluffs, Iowa 51501

Peter J. Peters
233 Pearl Street
Council Bluffs, Iowa 51501

For Defendants—
Lakin

Philip J. Willson
301 Park Bldg.
Council Bluffs, Iowa 51501

12-8-75 State of Iowa
Attorney General
Bennett Cullison, Jr. State Capitol
Harlan, Ia. 51537 Des Moines 50319

Monona County Attorney
Stephen W. Allen
Onawa 51040

Alan Loftis
Box No. 315
Seward, Nebraska 68434

Travelers Ins. Co.

(Jan. 1976)

Statistical Cards: Card JS-5 mailed 5-19-75 and Card
JS-6 mailed 5-20-77.

I, the undersigned Clerk of the United States District
Court for the Northern District of Iowa, do certify that
the foregoing is a true copy of an original document re-
maining on file and record in my office.

WITNESS my hand and seal of said Court this 16
day of November, 1978.

K. W. Fuelling, Clerk

(SEAL)

By: /s/ D. Henry, Deputy

Date	Nr.	Proceedings
1975		
5-19	1	Complaint To Quiet Title and For Injunctive Relief.
	2	Motion For Preliminary Injunction.
	3	Brief In Support of Motion For Preliminary Injunction.
5-22	4	Resistance To Plaintiff's Motion For Preliminary Injunction and
	5	Motion For Preliminary Injunction and
	6	Brief in Support of Resistance and Motion by Defendants Roy Tibbals Wilson, R. G. P. Incorporated, Harold Jackson and Otis Peterson.
5-22	7	Order setting hearing on Motions for 5-28-75 at 2:30 P. M.
5-28	8	Supplement to memorandum of Defts. Wilson et al in support of their resistance to pltf.'s motion for preliminary injunction.
5-28	9	Pltf.'s supplementary memorandum in support of motion for prel. injunction.
5-28	10	Official s/h notes of conference (separate file) (transcript rec'd. on)
5-30	11	Affidavits of U. S. (Cline, Robinson, Swanson, Corke & Veeder).
6- 2	12	Summons, w/Marshal's returns. (Fees: \$45.72)
6- 3	13	Affidavits of U. S. (Cline, Robinson, Swanson, Corke).
6- 3	14	Omaha Tribe's application to dismiss or hold in abeyance.
6- 3	15	Supplemental memorandum of Defts. Wilson, et al.

- 6- 3 16 State of Iowa's memorandum brief in support of special appearance.
- 6- 5 17 Order denying Defts. application for preliminary injunction & granting Pltfs. applications; all Defts. enjoined & restrained from interfering with use & occupancy of lands, and from prosecuting Monona District Court Action until final judgment entered herein; Pltfs. to deposit with Clerk net profits received from crops together with report of receipts & disbursements. (OB 18-200).
- 6- 9 18 Separate answer & counterclaim of deft. Jackson.
- 6-10 19 Answer of defts. Tibbals Wilson, Lakins.
- 6-16 20 Pltf.'s Response to Omaha Tribe's application to dismiss or hold in abeyance.
- 6-16 21 Separate answer & counterclaim of deft. Peterson.
- 6-18 22 Answer and Counterclaim of Deft. RGP.
- 6-18 23 Answer of Deft. State of Iowa.
- 7- 1 24 Order denying Motion of Omaha Tribe filed on 6-3-75 for dismissal. (OB 19-11).
- 7- 2 25 Defts. Wilson & Jackson application for order directing reimbursement of winter wheat crop expenses, w/affidavit.
- 7- 2 26 Motion by Defendant State of Iowa For Relief From Temporary Injunction.
- 27 Brief of Defendant State of Iowa in Support of Motion.
- 7-16 28 Resistance by Tribe & USA to application for order directing reimbursement of winter wheat crop expenses.
- 7-16 29 Pltf.'s Response to State of Iowa's Motion for relief from preliminary injunction.

- 7-19 30 Application For Order Directing Reimbursement of Winter Wheat Crop Ex.
- 7-21 31 Order that Defts. Wilson, Jackson, RPG., Inc. & Peterson shall be reimbursed by Tribe for expenses incurred in planting. (OB 19-23).
- 8-12 32 Pltf.'s Reply to counterclaim of Deft. Jackson.
- 33 Pltf.'s Reply to counterclaim of Defts. Wilson & Lakins.
- 34 Pltf.'s Reply to counterclaim of Deft. Peterson.
- 35 Pltf.'s Reply to counterclaim of Deft. RGP, INC.
- 9- 2 36 Tribe's Application to Court for Relief.
- 9- 3 37 Tribe's Report & accounting to the Court.
- 9- 5 38 Defts. Wilson & Jackson resistance to application to the court for relief.
- 9-18 39 Application for Payment of winter wheat crop expenses by RGP, INC. & OTIS PETERSON.
- 9-26 41 Memorandum In Support Of Omaha Tribe's Application For Relief.
- 9-24 40 RGP, Inc. & Otis Peterson application for change of possession of land for farming purposes.
- 9-29 42 Omaha Tribe brief to the court concerning question of jurisdiction.
- 10- 3 43 Defts. Wilson & Jackson application for possession for farming purposes for 1976 crop year. (separate file)
- 10- 6 44 Answer To "Application For Change Of Possession Of Land For Farming Purposes" and Motion For Trial On The Merits.
- 10- 7 45 Order—motion for relief from temporary injunction denied; plaintiffs' motion for equitable relief denied.

- 10- 7 46 Memorandum in Support of Defts. Wilson & Jackson's Application for Possession & Request for Oral Argument.
- 10- 8 47 Motion For Trial on the Merits; For Damages; and Answer to "Application For Possession For Farming Purposes For The 1976 Crop Year".
- 10-16 48 Order On Pending Motions.
- 10-17 49 Defts. Wilson & Jackson application for permission to harvest corn crop.
- 50 Affidavit of Raymond L. Huber (separate file).
- 10-29 51 Tribe's resistance to application to harvest corn.
- 10-31 52 Omaha Tribe's Compliance With Court's Order Concerning Wheat.
- 11- 6 53 Supplemental Compliance With Court's Order Concerning Wheat.
- 11- 6 54 Response of U. S. to Court's Order of 10-16-75.
- 11-12 55 Response of Wilson & Jackson to Court's Order of 10-16-75.
- 11-21 56 Application To Require Plaintiffs To Mark Court-Imposed Boundary and For Further Relief.
- 12- 8 57 Notice of appearance of Bennett Cullison for Deft. State of Iowa.
- 12-15 58 Order on Motions: Ruling for payment of winter wheat crop expenses reserved; permission to harvest corn crop denied as moot; motion to require pltfs. to mark court-imposed boundary granted, and U. S. directed to commence a survey for purpose of marking said boundary; final pre-trial conference set for 2-10-76 at 9:00 A. M., Sioux City. (OB19-108).

- 12-17 59 Order setting final pre-trial conference on 2-10-76 at 9 A. M.
 - 12-22 60 Motion To Dismiss by Defendant State of Iowa.
 - 12-24 61 Motion For Continuance. (Final Pretrial Conference.)
 - 12-31 62 Omaha Indian Tribe's Motion To Consolidate, Motion For Separate Trial and Response To Motion Of Harold Jackson.
 - 1976
 - 1- 5 63 Deft. State of Iowa's Application to modify temporary injunction. (Oral argument requested.)
 - 1- 5 64 Request To Withdraw Motion To Dismiss. (State of Iowa Filed 12-22-76).
 - 65 Motion For Continuance. (State of Iowa).
 - 1-13 66 Defts. State of Ia. & Cons. Comm. Resistance to motion to consolidate (Oral argument requested).
 - 1-14 67 Defts. Wilson & Lakin Request for production of documents, etc., under Rule 34.
 - 68 Defts. Wilson & Lakin Interrogatories to Pltf.
 - 1-21 69 Motion To Have Made Permanent The 1867 Barrett Meander Survey Line Based Upon Completed and Accurate Dependent Resurvey and Monumentation of That Line in Keeping with This Court's Order of December 15, 1975.
 - 1-22 70 Government's Request for Extension of Time to survey area as per Order of 12-15-75.
 - 1-26 71 Order on Motions: Cases No. C75-4024 and 4026 and C 75-4067 are consolidated; final pretrial conference continued until further order of court; Deft. State of Iowa's Motion to withdraw motion to dismiss granted. (OB 19-128)
-

UNITED STATES DISTRICT COURT
DOCKET ENTRIES

C 75-4026

January 26, 1976

OMAHA INDIAN TRIBE, organized Indian Tribe pursuant to Act of June 18, 1934 (48 Stat. 984) as amended,

Plaintiffs,

vs.

JACKSON, Harold; PETERSON, Otis; DISTRICT COURT IN AND FOR MONONA COUNTY, IOWA,

*intervening defts. added 8-25-75

Roy Tibbals Wilson and Charles Lakin,

Defendants.

CAUSE

Complaint for Injunction, for stay of State Court proceedings and Other Relief.

ATTORNEYS

For Plaintiff—

John T. O'Brien
916 Grandview Boulevard
Sioux City, Iowa 51101

William H. Veeder
4808 West Braddock Rd.
Alexandria, Va. 22311

*Defts. Wilson & Lakin
added 8-26-75:

Edson Smith
3535 Harney Street
Omaha 68131

plus Tom Burke &
Jack Peters as attorneys.

For Defendant—Jackson.

*Thomas R. Burke
Suite 1900
One First National Center
Omaha 68102

*Jack W. Peters
501-11 Park Bldg.
Council Bluffs 51501

Monona Co. District Court
Stephen W. Allen
718 Iowa Avenue
Onawa 51040

Peterson

Peter J. Peters
233 Pearl Street
Council Bluffs 51501

Statistical Cards: Card JS-5 mailed 5-20-75 and Card JS-6 mailed 5-20-77.

I, the undersigned Clerk of the United States District Court for the Northern District of Iowa, do certify that the foregoing is a true copy of an original document remaining on file and record in my office.

WITNESS my hand and seal of said Court this 16 day of November, 1978.

K. W. Fuelling, Clerk

(SEAL)

By: /s/ D. Henry, Deputy

Date Nr.

Proceedings

1975

- | | | |
|------|---|---|
| 5-20 | 1 | Complaint For Injunction, For a Stay of State Court Proceedings and Other Relief. |
| | 2 | Brief In Support Of The Position Of The Omaha Tribe of Nebraska. (Summons Issued and Delivered to Marshal.) |
| 5-22 | 3 | Order setting time for hearing on motions on 5-28-75 at 2:30 p. m. |
| 5-28 | 4 | Defts. resistance to application for preliminary injunction. |
| 5-28 | 5 | Defts. Jackson & Peterson motion for preliminary injunction. |
| 5-28 | 6 | Memorandum of Defts. in support. |
| 5-28 | 7 | Summons, w/Marshal's services on 5-21 & 5-23-75. (Fees: \$45.48). |
| 5-28 | 8 | Official s/h notes of conference. (separate file) (transcript rec'd.) |
| 6- 3 | 9 | Deft. District Court of Iowa Resistance to application for stay of State Court Proceedings. |

- 6- 3 10 Memorandum of points and authorities in support of title, possession & occupancy of U. S., Trustee for Omaha Indian Tribe.
- 6- 5 11 Order denying Defts. applications for preliminary injunction & granting Pltfs. applications; all Defts. enjoined & restrained from interfering with use & occupancy of lands, and from prosecuting Monona District Court action until final judgment entered herein; Pltf.s to deposit with Clerk net profits received from crops together with report of receipts & disbursements. (OB 18-200).
- 6- 9 12 Separate Answer & Counterclaim of Deft. Jackson.
- 6-16 13 Separate Answer & Counterclaim of Deft. Peterson.
- 7- 2 14 Deft. Wilson & Jackson's application for order directing reimbursement of winter wheat crop expenses, w/affidavit attached.
- 7- 3 15 Motion of Roy Wilson & Chas. Lakin to intervene as Defts., w/copy of proposed Answer attached.
- 7- 3 16 Memorandum of intervening Defts. in support of motion.
- 7-16 17 Resistance by Tribe & USA to application for order directing reimbursement of winter wheat crop expenses.
- 7-19 18 Defts. RGP INC. & OTIS PETERSON application for order directing reimbursement of winter wheat crop expenses.
- 7-21 19 Order that Defts. Wilson, Jackson, RGP, Inc. & Peterson be reimbursed by Tribe for expenses in planting. (OB 19-23).
- 8-25 20 Order granting Wilson & Lakin's Motion to intervene.
- 8-26 21 Answer of intervening Defts. Wilson & Lakin.

- 9- 2 22 Tribe's Application to Court for Relief.
- 9- 3 23 Tribe's Report & accounting to the Court.
- 9- 5 24 Defts. Wilson & Jackson Resistance to application to court for relief.
- 9-18 25 Application of RGP, INC. & Otis Peterson for payment of winter wheat crop expenses.
- 9-24 26 RGP, INC. & Otis Peterson application for change of possession of land for farming purposes.
- 9-29 27 Omaha Tribe Brief to the Court concerning question of jurisdiction.
- 10- 3 28 Application for possession for farming purposes for 1976 crop year. (See No. 43 in Case C 75-4024.)
- 10- 7 29 Order—motion for relief from temporary injunction denied; plttfs' motion for equitable relief denied.
- 10- 7 30 Memorandum in Support of Defts. Wilson & Jackson's Application for Possession and Request for Oral Argument.
- 10- 8 31 Motion For Trial on the Merits; For Damages; and Answer to "Application For Possession For Farming Purposes For The 1976 Crop Year."
- 10-16 32 Order On Pending Motions.
- 10-17 33 Defts. Application for permission to harvest corn crop.
- 34 Affidavit of Raymond L. Huber.
- 10-29 35 Tribe's resistance to application to harvest corn.
- 10-31 36 Omaha Tribe's Compliance With Court's Order Concerning Wheat.
- 11-06 37 Supplemental Compliance With Court's Order Concerning Wheat.
- 11-06 38 Response of U. S. to Court's Order of 10-16-75.

- 11-12 39 Response of Wilson & Jackson to Court's Order of 10-16-75.
- 11-21 40 Application To Require Plaintiffs To Mark Court-Imposed Boundary and For Further Relief.
- 12-15 41 Order on Motions: Ruling for payment of winter wheat crop expenses reserved; permission to harvest corn crop denied as moot; motion to require Pltfs. to mark court-imposed boundary granted, and U. S. directed to commence a survey for purpose of marking said boundary; final pre-trial conference set for 2-10-76 at 9:00 A. M., Sioux City. (OB 19-108).
- 12-17 42 Order setting final pretrial conference on 2-10-76 at 9:00 A.M.
- 12-24 43 Motion For Continuance. (Final Pretrial Conference.)
- 12-31 44 Omaha Indian Tribe's Motion To Consolidate, Motion For Separate Trial and Response To Motion Of Harold Jackson.
- 1976
- 1-14 45 Defts. Wilson & Lakin Request for production of documents, etc. under Rule 34.
- 46 Defts. Wilson & Lakin interrogatories addressed to Pltf.
- 1-21 47 Motion To Have Made Permanent the 1867 Barrett Meander Line Survey Based Upon Completed and Accurate Dependent Resurvey a Monumentation of that Line in Keeping with This Court's Order of December 15, 1975.
- 1-26 48 Order on Motions: Cases No. C75-4024 and 4026 and C75-4067 are consolidated; final pretrial conference continued until further order of court; Deft. State of Iowa's Motion to withdraw motion to dismiss granted. (OB 19-128).

UNITED STATES DISTRICT COURT
DOCKET ENTRIES

January 26, 1976

C 75-4067

OMAHA Indian Tribe, Treaty of 1854 with the U. S. (10 Stat. 1043), Organized pursuant to the Act of 6/18/34 (48 Stat. 984; 25 USC 476) as amended,

Plaintiffs,

vs.

TRACT I—BLACKBIRD BEND AREA, etc.; TRACT II—MONONA BEND AREA, etc.; and TRACT III—OMAHA MISSION BEND AREA,

Defendants.

CAUSE

(Private) U. S. C. 28-1331 Action to quiet title.

ATTORNEYS

For Plaintiff:

John T. O'Brien
916 Grandview Blvd.
Sioux City, Iowa 51101

William H. Veeder
4808 West Braddock Rd.
Alexandria, Va. 22311

For Defendant:

Lloyd Fletcher

Ronald E. Runge
436 Davidson Bldg.
Sioux City, IA 51101

For Defendants:

Darrell L., Harold, Harold
M. & Luea Sorenson

Maurice B. Nieland
300 Toy Bank Bldg.
Sioux City, IA 51101

For Defendants:

Hazel Jacobson, Fred
Sanders, Maurice Benjamin,
Rosalie Sanders,
Richard & Jean & George
Ruth, Ross Willey, Willa-
day Farms, W. W. & Arie
Virtue, Vincent Willey,
Arthur Orr, John Lund,
Lloyd Fletcher, Cleo Cox,
Herbert Nelson, Benjamin,
Amena Ruth, Ruth Lund,
Robert Orr

Wiley Mayne

300 Commerce Bldg.
Sioux City

(Honorable Andrew W. Bogue, U. S. District Judge
R. 318 Fed. Bldg. & U. S. Courthouse
515 - 9th St., Rapid City, So. Dak. 57701)

(see attached sheet.)

I, the undersigned Clerk of the United States District Court for the Northern District of Iowa, do certify that the foregoing is a true copy of an original document remaining on file and record in my office.

WITNESS my hand and seal of said Court this 16 day of November, 1978.

K. W. Fuelling, Clerk

(SEAL) By: /s/ D. Henry, Deputy
1975

- 10-06 1 Complaint to Quiet Title for Immediate Access, for Permanent Injunction Order for Quiet Possession, and for Damages (Summons to Marshal for Service.)
- 10-22 2 Appearance of Ronald E. Runge for Lloyd Fletcher.
- 10-23 3 Pltf.'s Application to the Court for Relief.
- 10-28 4 Stipulation For Extension of Time To Move or Plead.
- 10-29 5 Order approving stipulation & enlarging time to plead.
- 10-31 6 Motion To Enlarge Time To Move or Answer. (Defendants Darrell, Harold, Harold M. and Luea Sorenson.)
- 11-10 7 Motion For More Definite Statement (Defendant Northern Natural Gas Co.)
- 8 Brief in Support of Motion For More Definite Statement.
- 11-11 9 Order granting Defts. Sorensons until 12-3-75 to move or plead.

- 11-12 10 Stipulation or Time For Defendant Mid-American Pipeline Company To Move or Plead.
- 11-13 11 Motion of Deft. Harold Jackson for Order of dismissal. (Memo. attached).
- 11-13 12 Order granting Deft., Mid-American Pipeline, until 12-1-75 to move or plead.
- 11-21 13 Application For Enlargement of Time To Move or Plead.
- 11-24 14 Stipulation For Extension For Defendant James Brooks Benson To File Answer.
- 11-25 15 Appearance (pro se) for Defendant Ernest L. Olson.
- 16 Answer (pro se) by Defendant Ernest L. Olson.
- 17 Objection To Application For Enlargement of Time.
- 11-26 18 Order On Motions For Extension of Time to Move or Plead (12-10-75).
- 12- 1 19 Stipulation that Deft. AT&T be granted extension until 12-10-75 to answer.
- 12- 1 20 Motion of Roy Tibbals Wilson, Deft.
- 21 Memorandum in Support of Motion of Deft.
- 22 Stipulation For Extension of Time to Move or Plead.
- 23 Stipulation For Extension of Time To Move or Plead.
- 12- 3 24 Order granting Defts. AT&T; Jacobson, Cox, Fletcher, Peterson, Craford & Bentley until 12-10-75 to move or plead. Deft. Mid-America given until 12-15-75.
- 12- 3 25 Defts. Sorenson's Motion for more definite statement.

- 26 Reasons and authorities in support of motion.
- 12- 4 27 Deft. Benson Motion for extension of time to file answer.
- 12- 8 28 Motion Of Defendants RGP and Otis Peterson.
- 29 Stipulation For Extension of Time To Move or Plead.
- 12- 8 30 Deft. Iowa Public Service for More definite statement, w/Brief attached.
- 12-10 31 Order granting Deft. Benson until 12-15-75 to move or plead.
- 32 Answer of Deft. Travelers Insurance Companies.
- 33 Order granting Defts. State of Iowa & State of Iowa Conservation Commission until 12-15-75 to move or plead.
- 34 Application for enlargement of time (for defts. represented by W. Mayne).
- 12-15 35 Motion For Ingress And Egress In and To Blackbird Bend Tract. (Barrett Survey).
- 12-17 36 Motion of Deft. Fletcher for order to plaintiff to file a more specific statement.
- 12-22 37 Stipulation Enlarging Time. (Def. State of Iowa).
- 38 Motion To Dismiss by State of Iowa and Iowa State Conservation Commission.
- 12-30 39 Motion For Enlargement of Time To Move or Plead.
- 40 Application For Approval Of Costs.

- 41 Statement of Reasons And Authorities In Support Of Application or Approval Of Costs.
- 12-31 42 Defts. Wilson & Jackson Resistance to Motion for ingress & egress.
- 43 Response To Plaintiff's Motion For Ingress and Egress by Defendants Harold Sorenson, Harold M. Sorenson, Luea Sorenson and Darrell L. Sorenson.
- 44 Omaha Indian Tribe's Motion To Consolidate, Motion For Separate Trial and Response To Motion Of Harold Jackson.
- 1976
- 1- 5 45 Request To Withdraw Motion To Dismiss. (State of Iowa filed 12-2).
- 46 Answer of Defendants State of Iowa and Iowa Conservation Commission.
- 1-12 47 Defts. Jacobson, Sanders et al. Statement in opposition to motion to consolidate for trial & in opposition for separate trial.
- 1-13 48 Defts. State of Ia. & Cons. Comm. Resistance to motion to consolidate (Oral Argument requested).
- 1-15 49 Answer of Deft. Regina Marie Torticilli.
- 50 Deft. Torticilli Interrogatories to Pltff.
- 51 Application For Enlargement of Time to Move Or Plead.
- 52 Amendment To Statement In Opposition To Motion To Consolidate.
- 1-21 53 Motion To Have Made Permanent The 1867 Barrett Meander Line Survey Based Upon Complete and Accurate Defendant Resurvey and Monumentation of That Line in Keeping With This Court's Order of Decembe. 15, 1975.

- 1-23 54 Pltf.'s Motion to add defendants.
- 1-26 55 Order on motions: Pltf.'s unresisted motion for equitable relief filed 10-23-75 - *denied*; resisted motions to dismiss filed by Deft. Jackson on 11-13-75, Deft. Wilson on 12-1-75, & by Defts. RGP & Peterson on 12-8-75 - *denied*; unresisted motion to dismiss filed by Defts. State of Iowa & Conservation Commission & unresisted motion filed 1-5-76 to withdraw motion to dismiss—*granted*; motions to make more definite & certain filed by Deft. Northern Gas on 11-10-75, by Deft. Sorensons on 12-3-75, by Deft. IPS on 12-8-75, by Deft. Fletcher on 12-17-75—*denied*; Case *consolidated* with No. C75-4024 & 4026; Ruling on motion for ingress & egress *reserved*; Motion for approval of costs *granted* as to cost of preparing an abstract & its continuance & ruling reserved on remainder of motion; Defts. Benjamin et al given until 1-30-76 to move or plead. (OB 19-129).
- 4- 5 56 Order on various motions: including Item No. 7 severing Case No. 4067 from consolidated cases with respect to issues of damages and all issues concerning lands not within subject res. of Cases No. 75-4024 & 4026. (OB 19-161).
- 4- 7 57 Stipulation that Deft. Agricultural has until 4-24-76 to move or plead.
- 4- 9 58 Defts. Wilson & Jackson resistance to reapplication for access.
- 59 Brief in support of resistance.
- 4-14 60 Pltf. & Defts. Stipulation to plead by 4-23-76.
- 4-16 61 Order granting Defts. until 4-23-76 to move or plead.

- 4-23 62 Answer, Counterclaim and Jury Demand by Defts. (Mayne).
- 63 Motion for judgment on the pleadings of Deft. Agricultural, etc.
- 64 Affidavit of F. John Roost in support of motion for summary judgment of Deft. Agricultural.
- 65 Brief in support of motion for judgment on the pleadings & motion for summary judgment.
- 5- 6 66 First Set of Interrogatories to Pltfs. by Deft. Travelers Ins.
- 5- 7 67 Tribe's Reply to counterclaim and response to demand for jury trial.
- 68 Tribe's Motion to Amend. (add defendants).
- 5-18 69 Defts. (Mayne) resistance to motion to deny (response) demand for jury trial.
- 5-27 70 Tribe's resistance & response to Motion for judgment on pleadings & motion for summary judgment.
- 6- 3 71 Pltf.'s Motion to dismiss as to certain named defendants: (Disclaimers filed by: Hazel Jacobson; Elmer Swan; Emily Blair and Frances Goodman).
- 6- 4 72 Pltfs. (Tribe) Answer to first set of interrogatories of Deft. Travelers Insurance Company.
- 6- 7 73 Reply Brief of Agricultural etc. to "Resistance & Response of Tribe to Motion for judgment on pleadings & motion for summary judgment".
- 6-11 74 Notice of Appearance as Counsel of Record for Omaha Indian Tribe of William H. Veeder, Alexandria, Virginia.

- 6-23 75 Response To "Reply Brief" of Agricultural & Industrial Investment Company Dated June 7, 1976.
- 7-15 76 Answer & Counter-claim of Defts. RGP, Inc. & Otis Peterson.
- 7-19 77 Order granting Motion of Pltf. Tribe filed 5-7-76 to add certain parties as Defendants. Counsel for Tribe directed to notify these Defts. of conference scheduled on 8-6-76. (OB 20-13).
- 8- 6 78 Deft. Travelers Insurance Co.'s Motion for summary judgment on the issue of damages.
- 79 Travelers Brief statement in support of its motion.
- 80 Stipulation by Omaha Tribe & Deft. Monona County that Deft. may have until 9-2-76 to move or plead.
- 8-20 81 Answer, Counterclaim and Jury Demand of Mobil Pipe Line Company.
- 9- 2 82 Motion for leave to file amendment to Answer of Defts. State of Iowa & Iowa Conservation Commission. (copy attached).
- 83 Answer and counterclaim of Deft. Monona County.
- 9- 3 84 Answer of Jim McGuire, Referee.
- 9- 9 85 Answer, Counterclaim & Jury Demand of Defts. Weidner, Burns, Loraditch, Brennan, Nelson, Hickmans, Fender, Queens & Clark.
- 86 Motion for leave to file amendment to Answer of Defts. Boulden & Stokley (copy attached).
- 87 Tribe's Opposition to Motion for Summary Judgment by the Travelers Insurance Company.

- 88 Deft. Mobile Pipe Line Co.'s First Set of Interrogatories to Pltf.
- 9-20 89 Tribe's Reply to counterclaim of Monona County.
- 90 Tribe's Request to deny motion for amendment to answer of Defts. State of Iowa & Conservation Commission & reply to counterclaim.
- 91 Tribe's Response to interrogatories propounded by Deft. Mobil Pipe Line Co.
- 9-27 92 Tribe's reply to counterclaim of Mobil Pipe Line.
- 93 Tribe's reply to counterclaim Defts. Weidner, et al.
- 94 Tribe's reply & motion to strike demand for jury trial by Deft. Mobil Pipe Line.
- 95 Tribe's reply & motion to strike demand for jury trial by Defts. Weidner et al.
- 10-12 96 Disclaimer by Deft. Monona County to land within the Barrett Survey Area of Blackbird Bend Tract, and Motion for Dismissal from that action. (also No. 234 in consolidated case)
- 10-20 97 Answer of Estate of Maude B. Hudgel, deceased.
- 1977
- 2-11 98 Second Set of interrogatories to Pltf. from Iowa Public Service.
- 3-10 99 Response of Tribe to Second Set of interrogatories from IPS.
- 3-17 100 Motion For Partial Summary Judgment by deft. Iowa Public Service
- 3-17 101 Brief In Support of Motion For Partial Summary Judgment.

- 3-28 102 Tribe's Memorandum in response to Deft.'s Motion for Summary Judgment & Request for denial.
- 3-30 103 Deft. IPS Reply to Memorandum & response to Deft.'s Motion for summary judgment.
- 7- 8 104 Order on motion of 6-3-76 to dismiss Defts. Hazel I. Jacobson, Elmer W. Swan, Emily S. Blair and Frances J. Goodman: no resistance filed—hereby Ordered that Motion is Granted. (OB 21-23)

ATTORNEY'S FOR DEFENDANTS

Date	Attorney	Defendants
1975		
10-22	Ronald E. Runge 436 Davidson Bldg. Sioux City, Iowa 51101	Lloyd Fletcher
10-28	Wiley Mayne 300 Commerce Bldg. Sioux City, Iowa 51101	Hazel I. Jacobson Fred Sanders
	(on 9-9-76)	Maurice Louis Benjamin Rosalie Sanders Richard A. Ruth
	Dorothy Weinder Virginia Burns Rose Loraditch Mary Brennan Phylis Nelson Leslie Hickman Shirley Fender Robert Hickman Dorothy Queen Norman Queen	Ross O. Willey Willaday Farms, Inc. W. W. Virtue Ariel Virtue Vincent R. Willey Arthur Orr John H. Lund Lloyd Fletcher Cleo Cox
	Herbert Nelson Benjamin Charlotte J. Clark	Amena Ruth Ruth J. Lund Robert Orr.

- 11- 3 Maurice B. Nieland Darrell L. Sorenson
300 Toy National Bank Bldg.
Sioux City, Iowa 51101 Harold Sorenson
Harold M. Sorenson
Luea Sorenson
- 11-10 Philip Willson Northern Natural Gas
301 Park Bldg. Company.
Council Bluffs, Iowa 51501
- 11-12 P. L. Nymann Mid-American
383 Orpheum Electric Building Pipeline
Sioux City, Iowa 51101 Company.
- 11-13 Lyman L. Larsen Harold Jackson
1900 One First National Center
Omaha, Nebraska 68102
&
Jack W. Peters
501 Park Bldg.
Council Bluffs 51501
- 11-25 (Pro se) Ernest L. Olson
10417 Peoria Ave.
Sun City, Arizona
- 12- 1 E. F. Barnicle, Jr. American Telephone
T. F. Wobker & Telegraph Company.
811 Main St.
Kansas City, Missouri 64141
- 12- 1 Jack W. Peters Roy Tibbals Wilson
Edson Smith
3535 Harney St., Omaha 68131
- 12- 4 George F. Madsen James Brooks Benson
Charles R. Wolle
1109 Badgerow Bldg., S. City 51101
- 12- 8 Peter J. Peters RGP, Inc. and
233 Pearl Street Otis Peterson
Council Bluffs, Iowa 51501

12- 8	Bennett Cullison Harlan, Iowa 51537	State of Iowa and State of Iowa Conservation Commission.
12- 8	Dewie J. Gaul 383 Orpheum Elec. Bldg. Sioux City 51101	Iowa Public Service Co.
12-10	Lowell C. Kindig Michael W. Ellwanger 300 Toy National Bank Bldg. Sioux City 51101	The Travelers Insurance
1976		
1-15	Theodore T. Duffield 729 Insurance Exchange Bldg. Des Moines 50309	Regina Marie Torticilli
9- 2	Stephen W. Allen Monona County Courthouse Onawa, Iowa 51040	Monona County Attorney
9- 3	Steven A. Carter 215 Benson Bldg. Sioux City 51101	Jim McGuire, Referee Estate of Maude B. Hudgel
8-20	Robert R. Eidsmoe 200 Home Federal Bldg. P. O. Box No. 3086	Mobil Pipe Line Company

Notice of Appeal by Plaintiff May 9, 1977.

Notice of Filing Petition for Certiorari 7-28-78.

Consolidated Cases No. C 75-4024 & 4026 and C 75-4067
on January 26, 1976.

SUPREME COURT DOCKET

UNITED STATES DISTRICT COURT

No. C 75-4024

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ROY TIBBALS WILSON, et al.,

Defendants.

No. C 75-4026

OMAHA INDIAN TRIBE, etc.,

Plaintiff,

vs.

HAROLD JACKSON, et al.,

Defendants.

No. C 75-4067

OMAHA INDIAN TRIBE, etc.,

Plaintiff,

vs.

AGRICULTURAL & INDUSTRIAL INVESTMENT
COMPANY, et al.,

Defendants.

I, the undersigned Clerk of the United States District Court for the Northern District of Iowa, do certify that the foregoing is a true copy of an original document remaining on file and record in my office.

WITNESS my hand and seal of said Court this 16 day of November, 1978.

K. W. Fuelling, Clerk

(SEAL)

By: /s/ D. Henry, Deputy

Date	No.	Proceedings
1976		
1-26	71	Order on Motions & Consolidating Cases. (No. C 4024 & 4026).
	72	Defts. Wilson & Jackson Resistance to Tribe's Motion to have made permanent a survey line as a boundary line. (all 3 cases).
	73	Pltf.'s Motion to dismiss as to certain named defendants. (No. C75-4067) (30 signed disclaimers in separate file).
1-27	74	Pltf.'s Motion to amend—names of Glen & Grace Swan to be removed from list of disclaimers. (No. C75-4067).
1-29	75	Answer and Counter-Claim of Defendant Lloyd Fletcher (4067).
1-30	76	Defts. (Mayne) application for enlargement of time.
2- 4	77	Pltf.'s Motion to dismiss as to certain named defendant (Letha Jenkins) (No. C75-4067) (Disclaimer filed).
2- 5	78	Answer of Defts. Wilson, Jackson & Lakins (No. 4067).
	79	Answer of Deft. Northern Natural Gas Company (No. 4067).
	80	Interrogatories to Pltf. from Northern Natural Gas Co.
	81	Request for Production from Deft. Northern Natural Gas.

	82	Order granting (Mayne) Defts. until 2-19-76 to move or plead (final extension).
2-10	83	Answer & Counterclaim of Deft. IPS (No. 4067).
	84	Interrogatories to Pltf. from IPS.
	85	Request for production from Deft. IPS.
2-11	86	Motion to dismiss as to certain named deft. (James Brooks Benson) (disclaimer filed).
	87	Report of Omaha Tribe on farming procedures (No. 4024 & 4026) check received for \$24,585.79.
2-12	88	Order on motions; Deft. Iowa's filed 1-6-76 to modify temporary injunction; Pltf. Tribe's filed 1-21-76 to make permanent resurvey; Pltf. U. S. filed 1-22-76 for extension to comply with court order; Pltf. Tribe's to dismiss certain defts. ORDERED motion to make permanent resurvey denied; motion for extension of time granted; motions to dismiss granted; motion for modification of temporary injunction granted. Pltf. Tribe enjoined & restrained from any further alterations to lands character within court's previous injunctive decree to which State of Iowa claims an interest (certain prohibited alterations included) (OB 19-139).
	89	Answer and Counterclaim of Defendants Harold, Harold M., Luea and Darrell L. Sorenson (No. 4067).
	90	First Amendment To Answer and Counterclaim of Iowa Public Service Co. (No. 4067).
2-18	91	Deft. IPS Demand for trial by jury (No. 4067).
2-18	92	Tribe's Reply to request for production from Deft. IPS (No. 4067).

- 93 Tribe's Response to request for production of documents by Defts. Wilson & Lakin (No. 4026 & 4067).
- 94 Tribe's Reply to "First Amendment to answer & counterclaim of IPS" Deft. (No. 4067).
- 95 Tribe's Reply to answer & counterclaim of Deft. Fletcher (4067).
- 96 Tribe's Response to resistance of motion "to have made permanent" a survey line as filed by Defts. Wilson & Jackson. (all 3).
- 97 Tribe's Response to interrogatories presented by Defts. Wilson & Lakin (No. 4026).
- 2-19 98 Order granting Motion to dismiss as to Deft. James Brooks Benson (No. 4067) (OB 19-142).
- 2-19 99 Order extending time to comply with C.O. of 12-15-75 as to expenses to 2-23-76. U. S. granted until 3-8-76 to respond to interrogatories & request for production by Defts. Wilson & Lakin.
- 2-19 100 Defts. Sorensons Demand for jury trial (No. 4067).
- 101 Defts. Am. T & T Motion for more definite statement, w/statement in support attached (No. 4067).
- 102 Defts. (Mayne) Motion to dismiss (No. 4067).
- 103 Tribe's Answer to interrogatories submitted by Deft. IPS (No. 4067).
- 104 Tribe's Reply to answer & counterclaim of Deft. IPS (No. 4067).
- 2-23 105 Report To The Court As Per Order of December 15, 1975 (4024).

- 106 Stipulation In Re 1975 Wheat Crop and Expenses (4024 & 4026).
- 2-24 107 Defts. Wilson, Jackson, Peterson, & RGP for more definite statement & for time to object to report of Tribe (4024 & 26).
- 108 Deft. Travelers Insurance Answer (4024).
- 2-26 109 Defts. Wilson, Jackson & Lakins Demand for trial by jury (all).
- 3- 2 110 Order extending time for complying with court order of 12-15-76 as to expenses to 3-4-76.
- 3- 5 111 Report of Wilson & Jackson as per order of court 12-15-75 in re corn crop South of Barrett boundary.
- 3- 8 112 (USA) Pltf.'s Motion to strike jury trial demand, w/brief attached (4024).
- 3- 8 113 (Pltf. Tribe) Motion for order requiring reconciliation of land surveys (4067).
- 3- 9 114 Motion to Dismiss As To Certain Named Defendants (Disclaimers).
- 115 Answers To Interrogatories By Regina Marie Torticilli.
- 116 Reply to Answer and Counterclaim of Defendants Harold Sorenson, et al.
- 117 Reply To Counterclaim of Roy Tibbals Wilson et al.
- 118 Plaintiff's Motion To Amend.
- 119 Plaintiff's Motion For Summary Judgment. Response To Motion To Dismiss On Grounds of Statute of Limitations and Motion For Summary Judgment.

1976

- 3-10 120 Tribe's Reply to demands for jury trial filed and request for trial (4067), w/Memorandum in support attached.
- 3-12 121 Stipulation by Tribe & Deft. Agricultural & Industrial, that Deft. has until 3-29-76 to move or plead (4067).
- 3-15 122 Deft. Torticilli's Supplemental interrogatory to Pltf. (4067).
- 123 Order granting Deft. Agri. & Industrial until 3-29-76 to move (4067).
- 3-15 124 Pltf. U. S. A. Responses to request for production of documents, etc. under Rule 34 (4024).
- 125 Pltf. U. S. A. Answers to interrogatories of Defts. Wilson & Lakin (4024).
- 3-16 126 Motion to Dismiss as to Defts. Mrs. Howard Miller, Myrtle R. Riggs, Maude B. Hudgel Estate, George B. Boulden Estate, Elmer Swan, Ethel Parks, Charles H. Truelsen & Duane A. Dowd.
- 3-17 127 Resistance of Defendants Roy Tibbals Wilson et al. To The Reply Of Omaha Indian Tribe To Demands For Jury Trial.
- 128 Resistance To Motion Of Plaintiff, U. S., To Strike Demand For Trial By Jury Filed By Defendants Roy Tibbals Wilson et al.
- 3-18 129 Answer—Defendant Williams Pipeline Company.
- 3-19 130 Plaintiff's Motion To Amend Complaint by Adding Named Defendants.
- 131 Official Government Plat and Field Notes of the Dependent Resurvey of the Barrett Line.

- 3-22 132 Defts. Wilson & Jackson application to modify temporary injunction (4024 & 4026).
- 3-24 133 Defts. Wilson & Jackson Report & application re 1976 farming & access issues (Oral argument requested) (4024 & 4026).
- 3-24 134 Defts. Wilson & Jackson Application for order directing reimbursement of 1974 fall ground preparation & fertilizer expenses incurred for 1975 corn crop (4024 & 4026).
- 3-25 135 Pltf. Tribe Reapplication for access (4067).
- 3-25 136 Pltf. Tribe's Answers to Interrogatories by Northern Gas (4067).
- 3-26 137 Plaintiff's Response To Motion To Dismiss.
- 138 Plaintiff's Response To Supplementary Interrogatory from Regina Marie Torticilli.
- 3-29 139 Stipulation that Deft. Agricultural Co. may have until 4-8-76 move or plead (4067).
- 4- 2 140 Tribe's Response to application to modify temporary injunction & petition for denial of application (4067).
- 4- 5 141 Order on following motions: (OB 19-161)
 - 1. Deft.'s AT&T to make more definite & certain denied.
 - 2. Pltf. Tribe to supplement crop report by 4-16-76. Defts. objections by 5-3-76. Defts. Wilson, etc. to make more definite & certain denied in all other respects.
 - 3. Defts. to dismiss denied.
 - 4. Pltf. Tribe's to dismiss granted. (Mid-Continent Eastern Pipeline & Mid-American Pipeline).
 - 5. Defendant resurvey approved, unless modified by 4-16-76, or Pltf. Tribe shows just cause for disapproval.

6. Pltf. Tribe to amend complaint denied.
 7. Case No. 4067 severed with respect to issues of damages & all issues concerning lands not within the subject res of cases Nos. 4024 & 4026.
 8. Pltf. US & Pltf. Tribe to strike jury trial demand granted with respect to consolidated cases; ruling reserved on remainder of motion.
 9. Pltf. Tribe motion for partial summary judgment granted on those issues indicated in text and denied in remaining respects.
 10. Clerk directed to pay from Registry Fund the amount of \$5,495.05 to Roy Tibbals Wilson & Harold Jackson, jointly, and \$969.71 to RGP, Inc. & Otis Peterson, jointly.
 11. Defts. Wilson & Jackson to recover \$774.43 from Tribe at time of satisfaction of all 1975 corn crop expenses.
- 4-13 Mailed Checks No. 1667 for \$5495.05 (payable to Wilson & Jackson) & No. 1668 for \$969.71 (payable to RGP, Inc. & Peterson) to attorneys, Larsen & Peter Peters.
- 4- 9 142 Defts. Wilson & Jackson Resistance to reapplication for access.
- 143 Memorandum brief in support of resistance.
- 4-13 144 Pltf. Tribe's Withdrawal of motions pertaining to access.
- 4-14 145 Govt.'s Reply to Defts.' Resistance to motion to strike demand for jury trial (4024).
- 4-15 146 Motion to have accepted the plat and description filed 1-21-76 by Omaha Tribe and to have rejected the plat filed 3-19-76.

- 4-23 147 Additional interrogatories addressed to Pltf. USA by Defts. Wilson, Lakin & Jackson.
- 148 Additional Request for Production of documents, etc. under Rule 34.
- 4-26 149 Defts. Wilson, Jackson, RGP & Peterson Objections & Exceptions to crop report of Omaha Tribe.
- 4-30 150 Defts. Wilson, Jackson, RGP, Peterson, Lakin & State of Iowa application for possession pursuant to order of 6-5-75.
- 4-30 151 Government's Request for extension of time in which to respond to Omaha Tribe's Motion to have accepted the tribal plat of resurvey.
- 5- 5 152 Order assigning cases to Honorable Andrew W. Bogue, U. S. District Judge for District of South Dakota for disposition.
- 5- 7 153 Plaintiff's Interrogatories to Defendants.
- 154 Tribe's Resistance to application for possession pursuant to Order of 6-5-75, filed 4-30-76, by Wilson, Jackson, RGP, Lakin, Peterson & State of Iowa.
- 5-10 155 Amendment by Tribe to above resistance (correcting heading and case numbers).
- 5-14 156 Pltf.'s (USA) Resistance to Tribe's Motion to have accepted plat filed on 1-21-76.
- 5-17 157 Pltf.'s Resistance to Defts.' Application for possession.
- 5-24 158 Order of Judge Bogue that each paper filed in cases be accompanied by one extra copy for his use (OB 19-192).
- 5-24 159 Response by Tribe to objections & exceptions to the crop report of the Omaha Tribe.
- 5-27 160 Tribe's Motion to strike Pltf. (US) Resistance to Tribe's Motion to have plat accepted.

- 161 Tribe's Motion to strike unsworn statements.
- 162 Memorandum of Points & authorities in support of motion to strike.
- 6- 9 163 Deft. Travelers Ins. Answers to Interrogatories.
- 6-11 164 Notice of Appearance as Counsel of Record for Omaha Indian Tribe by William H. Veeder, Alexandria, Virginia.
- 6-14 165 Government's Answers To Interrogatories (additional).
- 166 Plaintiff's Resistance To Omaha Tribe's Motion To Strike.
- 6-16 167 Filing Of Affidavit In Support of Motion Dated May 27, 1976 By Omaha Tribe, To Strike.
- 168 Memorandum In Support of Motion To Strike.
- 6-21 169 Deft. State of Iowa's Answers to Pltf.'s Interrogatories.
- 6-23 170 Order granting Defts. until 6-30-76 to answer interrogatories of Pltf. USA.
- 6-25 171 Filing of Affidavit in Support of Motion Dated May 27, 1976, by Omaha Tribe to Strike.
- 6-29 172 Answers of Defts. Wilson, Jackson & Lakins to Interrogatories of Pltf. USA.
- 7- 1 173 Answers of Defts. RGP, Inc. & Peterson to interrogatories of Pltf.
- 7- 2 174 Pltf. Tribe's Motion for an early trial on the merits, w/affidavit of Chairman Edward L. Cline attached.
- 7- 6 175 Pltf. Tribe's Motion to show government rejection of its own BLM 3-2-76 plat; and acceptance of plat filed by Tribe.

- 7-19 176 Defts. Wilson, Jackson, RGP, & Peterson Answer to response by Omaha to objections & exceptions to crop report.
- 7-28 177 Plaintiff (U. S.) Resistance To Omaha Tribe's Motion To Show Government Rejection of its own B. L. M. March 2, 1976 Plat etc.
- 8-12 178 Order pursuant to agreement of counsel at informal conference, that attorneys to meet on 9-7-76 at 9:30 A. M. in U. S. Courthouse in Sioux City and accomplish certain items—stipulation of facts; exchange lists of witnesses & exhibits & any other agreements to facilitate case trial. A record to be kept and written statements of stipulations of facts & issues to be filed by 9-20-76 (OB 20-25).
- 8-12 179 Tribe's Reply to counterclaim of Defts. RGP, Inc. & Otis Peterson.
- 180 Motion by Tribe for partial summary judgment.
- 181 Memorandum of Points & authorities in support of Motion.
- 8-16 182 Interrogatories To Plaintiff United States of America by Defendants Roy Tibbals Wilson and Charles E. Larkin in Blackbird Barrett Cases.
- 183 Interrogatories To Plaintiff Omaha Indian Tribe by Defendants Roy Tibbals Wilson and Charles E. Lakin in Blackbird Barrett Cases.
- 8-27 184 Tribe's Resistance to application for order directing reimbursement of 1974 fall ground preparation & fertilizer expenses incurred for 1975 corn crop.

- 8-30 185 Order authorizing Court Reporter for conference on 9-7-76 and Clerk to arrange for compensation (OB 20-30).
- 9- 2 186 Motion for leave to file amendment to Answer of Deft. State of Iowa (copy attached).
- 9- 3 187 Motion by Tribe for a protective order against the Justice Department in the Tribe's presentation & prosecution of Cases Nos. 4026 & 4067.
- 9- 7 188 Pre-Trial Order, Proposed Agreed Facts of Pltf. the Tribe.
- 189 Part I, Pre-Trial Order of Pltf. the Tribe. List of Witnesses.
- 190 Part II, Pre-Trial Order of Pltf. the Tribe. List of Exhibits.
- 9- 9 191 Motion for leave to file amendment to answer of Defts. Wilson & Lakins (4024) (copy attached).
- 192 Motion for leave to file amendment to answer of Defts. Wilson & Lakin (4026) (copy attached).
- 193 Motion for leave to file amendment of Defts. Wilson, Jackson, & Lakins (4067) (copy attached).
- 9- 9 194 Response of Tribe to interrogatories propounded by Defts. Wilson & Lakin in Blackbird Barrett Cases.
- 9- 9 195 Tribe's Opposition to Motion for Summary Judgment by the Travelers Insurance Company (See No. 87 in Case No. 4067).
- 9-10 196 Tribe's Motion for hearing on Motion to Strike 3-2-76 Bureau of Land Management Survey.

- 197 Tribe's Motion to require completion of pre-trial process & preparation of final pre-trial order.
- 9-14 198 Order setting cases relating to the Barrett Survey area of the Blackbird Bend Tract for trial on 11-1-76 at 1:00 P. M. (OB 20-43).
- 199 Defts. State of Iowa, & Conservation Commission, Wilson, Jackson, Lakins, RGP & Peterson, Motion for Order setting additional preliminary pretrial conference.
- 9-17 200 Response of U. S. to interrogatories submitted by Defts. Wilson & Lakin.
- 201 Response of U. S. to Tribe's Motion for protective order against Dept. of Justice.
- 9-20 202 Tribe's Reply to amendments to answer of intervening Defts. Wilson & Lakin (4026).
- 203 Tribe's Reply to amendment to answer of Defts. Wilson, Jackson & Lakins.
- 204 Tribe's Proposed Agreed Facts & Joint Exhibits.
- 205 Exhibit Testimony from Pretrial Conference held on 9-7-76 submitted by Bennett Cullison, Jr.
- 206 Agreed Facts submitted by Peter J. Peters one of the attorneys for Defts. USA, Wilson, Lakin, RGP, Sorenson, State of Iowa, Jackson & Peterson.
- 207 U. S. Statement on disputed issue of facts and law (4024).
- 9-21 208 Statement of Defts. State of Iowa & Iowa Conservation Commission.
- 9-23 209 Tribe's response to Defts' Motion for order setting additional preliminary pretrial conference.

- 9-23 210 Deft. RGP Motion for leave to file amendment to answer (4024).
- 211 Deft. RGP & Peterson Motion for leave to file amendment to answer (4067).
- 9-23 212 Tribe's Motion to be permitted in the trial of consolidated cases to offer its evidence prior to that of Justice Dept. in 4024; to have the Justice Dept. aligned as an adversary in these consolidated cases.
- 9-23 213 Transcript of pretrial conference held on 9-7-76 (one copy only).
- 9-27 213(a) Tribe's Reply to amendment to answer of Defts. RGP & Peterson.
- 214 U. S. Objections to 4 filings attached as one pleading: (1) Objections to Tribe's proposed agreed facts & joint exhibits; (2) Resistance to State of Iowa's Motion to file amendment to its answer; (3) Response to Tribe's Motion to require completion of pretrial process; (4) Resistance to Defts. Wilson & Lakins Motion to amend answer.
- 215 U. S. Resistance to Tribe's Motion for hearing on motion to strike March 2, 1976 Bureau of Land Management survey (4024).
- 9-28 216 Defts. Wilson, Jackson, Lakins, RGP, Peterson, State of Iowa, & Iowa Conservation Motion for further discovery.
- 9-29 217 Defts. Wilson & Lakins motion for leave to file amendment to answer & withdrawal of previous motion (not ruled on) for leave to file amendment to answer (4024) (copy attached).
- 9-29 218 Showing in support of motions of Defts. Wilson, Lakin & Jackson for leave to file amendments to their answers.

- 9-29 219 Defts. Wilson & Jackson Motion to enter injunction in previously file application (4024 & 4026).
- 10- 1 220 Order Re. Defts. Motion, (Wilson, Jackson, Lakins, R. G. P., Peterson, State of Iowa and Conservation Commission) Tribe make expert witnesses, Clark & Robinson, available for deposition, providing defts. have exchanged exhibits (OB 20-5).
- 10- 4 221 Request by U. S. for admission by Defts. Wilson, Lakins, RGP, Jackson, Peterson, Travelers Ins. & State of Iowa of the truth of statement re. lands in paragraph 2 of complaint (4024).
- 10- 5 222 Answer of Defts. Wilson, Lakin & Jackson to request by the US for admission by Defts. (4024).
- 10- 6 223 Defts. Wilson, Jackson, Lakin, RGP, Peterson, State of Iowa & Conservation Comm. Motion to clarify order of 9-29-76 & to set date for reconvening preliminary pre-trial conference & for taking depositions.
- 10- 7 224 Pltf. (USA) Resistance to RFP's (sic) Motion for leave to file amendment to answer (4024).
- 10- 8 225 Answer of Deft. State of Iowa to request by U. S. for admission by Defts. (4024).
- 10-12 226 Order: On motion of 9-29-76 to clarify & to set date for PPTC, & consolidated with motion by Tribe to require completion of pre-trial process, phrase "exchange of exhibits" merely require parties to comply with local rule 23B; reconvening PPTC for 10 AM on 10-12-76; Counsel for Tribe have available for deposition on 10-14-76 at 2 PM their experts, Clark & Robinson: counsel for Tribe

- & US to direct their surveying experts to prepare for the Court topographical maps. (OB 20-57).
- 227 Order: On Motions—*State of Iowa* to amend answer—no resistance, motion granted: *Deft. Jackson* to amend answer—denied as would alter issues: *Defts. Wilson & Lakin* to amend—denied: *Deft. RGP* to amend—denied: *Deft. Peterson* to amend—denied: *Defts. Wilson & Jackson* to enter injunction in previously filed application—Pltf. Tribe enjoined & restrained from making any further alterations to character of those lands within the previous injunctive decree, roads, culverts, etc. (OB 20-58).
- 228 Order that counsel prepare & file with Clerk in S. City, proposed findings of fact & conclusions of law 1 week prior to trial & 3 copies be mailed to Judge Bogue (OB 20-59).
- 229 Answer of *Defts. RGP & Peterson* to request by US for admission by *Defts.* (4024).
- 230 Tribe's Motion to request payment for transcript.
- 231 Resistance by US to Tribe's 9-23-76 Motion to offer evidence & to align parties (4024).
- 232 *Deft. State of Iowa* Amendment to Answer (4024).
- 233 Tribe's Response to resistance of Justice Dept. to Tribe Motion of 9-23-76 to offer evidence & to align parties.
- 234 Disclaimer by *Deft. Monona County* to land within the Barrett Survey Area of Blackbird Bend Tract & Motion for dismissal from that action (4067).
- 10-14 235 *Deft. Travelers Ins.* Answer to request for admission filed by US (4024).

- 10-18 236 Tribe's Motion for order granting access across lands of *Deft. Sorenson* (4067).
- 10-22 237 Order: re. resurvey Tribe seeking to challenge accuracy made by Bureau of Land Management: Tribe has not exhausted its administrative remedies: differences insubstantial; therefore results of Bureau of Land Management's resurvey are adopted & will be lines of reference during course of trial: no evidence, for sole purpose to challenge resurvey, will be admitted at trial on the merits (OB 20-70).
- 10-22 238 Govt.'s Answer to *State of Iowa's* Counterclaim (4024).
- 10-22 239 *Deft. Sorenson* Proposed Findings of Fact & Conclusions of Law.
- 10-22 240 *Deft. Travelers Ins.* Suggested Findings of Fact & Conclusions of Law.
- 10-26 241 Order on Motions: (1) Application of *Deft. Wilson, Jackson, RGP, Lakin & State of Iowa* for possession of certain allotted land sold to non-tribal members—DENIED. (2) Motion by Tribe for partial summary judgment against *Peterson & RGP* relating to defenses asserted in answers of statute of limitation estoppel & laches & related defenses—GRANTED per order of 4-5-76, which dealt in part with such defenses. (3) Motion of *Deft. Monona County* for dismissal — GRANTED as to trial of lands within Barrett Survey only (OB 20-73).
- 10-26 242 Order on seating arrangement at trial, and terms to be used; presentation of evidence and with examination of witnesses in same order as reference of terms; neither Pltf. may cross-examine the other Pltf.'s witness.

- es, and no Deft. another Deft.'s witnesses (OB 20-74).
- 10-26 243 Order that daily transcript be prepared; cost divided seven ways (each Pltf. shall bear 1/7 of cost. Defts. Wilson, Jackson, Lakin together 1/7. Defts. RGP & Peterson 1/7. Defts. Sorenson 1/7. State of Iowa 1/7. Travelers Ins. 1/7) (OB 20-75).
- 10-26 244 Pltf. U. S. Submission of plats pursuant to Order of 10-7-76.
- 10-26 245 Pltf. U. S. Proposed Findings of Fact & Conclusions of Law.
- 10-26 246 Tribe's Index to Findings of Fact & Conclusions of Law.
- 10-26 247 Defts. Wilson, Lakins, RGP, Jackson, Peterson & State of Iowa Proposed Findings of Fact & Conclusions of Law.
- 10-27 248 Depositions of Dr. George R. Hallberg: Dr. Subhash C. Jain: Dr. John F. Kennedy: Dr. Raul S. McQuivey: Dr. Daryl B. Simons (separate file).
- 10-28 249 Order on Motions filed by Tribe on 9-3-76 & 9-23-76: Motion for Protective Order denied: Motion as to evidence—Tribe will be expected to offer its evidence first; Tribe will not be permitted to object to Govt. evidence, to cross-examine Govt. witnesses, or offer evidence in rebuttal to Govt. evidence (OB 20-77).
- 10-28 250 Deft. Sorenson Resistance to Tribe's Motion for order granting access.
- 251 Deft. Sorenson List of Exhibits.
- 10-29 252 Order: all parties to brief question of where risk of non-persuasion lies & submit briefs at commencement of trial; order & manner set out for presenting evidence (OB 20-77).

- 253 Transcript of pretrial conference Part II on 10-12-76 (one copy only—given to Judge B.).
- 11- 1 254 Pltf. (US) Memorandum on Burden of Proof (4024).
- 255 Deft. Travelers Ins. Brief on question of risk on nonpersuasion.
- 256 Deft. Sorenson Brief re. Risk of non-persuasion.
- 257 State of Iowa's Memorandum on question of burden of proof.
- 258 Tribe's Brief respecting question of where risk of nonpersuasion lies.
- 11- 5 259 Supplemental Memorandum of Law to Proposed Findings of Fact & Conclusions of Law submitted by Defts. Wilson, Lakins, RGP, Jackson, Peterson & State of Iowa.
- 11-15 260 Tribe's Motion & Objection to introduction of evidence by Justice Dept. in these consolidated cases.
- 261 Tribe's Motion to have this Court declare burden of proof resides with Defts.
- 262 Deft. Sorenson Brief regarding consolidation.
- 12- 3 263 Stipulation between Defts. "Iowa" & Sorenson that in event judgment finds lands are owned by Defts. & not by Tribe, that any issue between Iowa & Sorenson as to ownership of any of such land may be heard by separate trial, provided in Rule 42b. FRCP.
- 12- 6 264 (a) Deposition of E. M. Clark.
(b) Deposition of Charles S. Robinson behalf of Defts. Separate file (Fees: 323.90 &)
- 12- 7 265 Clerk's Court Minutes of trial from 11-1-76 to 12-6-76.

- 12- 8 266 Plaintiff (Tribe) Exhibits.
 267 Plaintiff (Government) Exhibits.
 268 Defendants Exhibits.
- 1977
- 1- 3 269 Order granting Motion of Tribe for access across land of Deft. Sorenson; further ordered that access shall be for time between Jan. 1, 1977 to Dec. 31, 1977 and shall be upon same terms & conditions as agreed between Tribe & Sorenson for 1976 (OB 20-110).
- 1-18 270 Defts. Wilson, Jackson, RGP & Peterson's Motion to clarify Court's Order of 1-3-77.
- 1-26 271 Tribe's Response to Motion to clarify court order of 1-3-77.
- 2- 3 272 Order on defendant's motion to clarify 1-3-77 Order: Tribe entitled to deduct expenses paid for access to land as a business expense in calculating "net profits" to be paid to Clerk of Court; Tribe to file its accounting for 1976 by 3-1-77; if decision on the merits were entered in favor of Defts. & against Pltfs. then preliminary injunction by which Pltfs. hold Blackbird Bend area would necessarily be dissolved, thus rendering question of access moot; Defts. Motion to more specifically limit access order be & hereby is denied (OB 20-125).
- 2-15 273 Proposed Findings of Fact, Conclusions of Law, and Decree, submitted by Defts. Wilson, Lakins, Jackson, State of Iowa, RGP, Peterson, Sorenson & Travelers (separate file) No. 273 thru 278.
- 274 Above Defendants' Brief on the Issue of Burden of Proof.
- 275 Govt. Plaintiff's Requested Findings of Fact and Conclusions of Law.

- 276 Government's Memorandum in support of its Requested Findings of Fact and Conclusion of Law.
- 277 Findings of Fact, Conclusions of Law, proposed by Omaha Indian Tribe, Plaintiff.
- 278 Brief of Defendants.
- 2-28 279 Crop Report for 1976 by Omaha Tribe.
- 3- 4 280 Tribe's Motion for Judgment, w/Memorandum of points & authorities in support of motion attached.
- 3- 7 281 Motion To Strike Brief of Defts. by Omaha Indian Tribe.
- 3- 9 282 Defts.' Resistance to Tribe's Motion to strike "Brief of Defts."
- 3-15 283 Defts.' Objections & exceptions to crop report of Omaha Tribe for 1976.
- 3-18 284 Order denying motion of Omaha Tribe to strike brief of Defts. (OB 20-148).
- 3-23 285 Order that the court reporting charges submitted by Catherine Clark in amount of \$172.20 for pretrial conference taken on 9-7-76 to be paid by the parties in same manner & according to same division as was used in payment of daily transcript of the trial (OB 20-156).
- 3-28 286 Tribe's Response to Objections & Exceptions to Crop Report of Omaha Tribe for 1976.
- 5- 4 287 Letter from Judge Bogue to Attorneys filed as part of the record because of the unique nature of this case.
- 288 Memorandum Opinion.
- 289 Findings of Fact and Conclusions of Law.

290 DECREE: (1) Each & every one of the Findings of Fact & Conclusions of Law are by reference made a part hereof.

(2) The clear & convincing evidence is that the original "Barrett Survey" lands & accretions thereto have been entirely eroded & washed away by the erosive force of the river since 1867. The land in this litigation was not left by avulsive action of the river, but was formed by accretion to the riparian land on the Iowa side of the river, commencing sometime after 1867 & defendants' title is derived therefrom.

(3) Plaintiffs' prayers for relief are hereby denied, & judgment given to defendants on their counterclaims, & as between the defendants on the one hand & the plaintiffs on the other hand, title to the Barrett Survey land is quieted in defendants as their respective interest may appear.

5- 4 290 (Decree continued):

(4) All prior injunctions or orders of this Court to the contrary are dissolved.

(5) The preliminary injunction entered 6-5-75, giving possession of the Barrett Survey area to the Omaha Indian Tribe is hereby vacated, dissolved and set aside.

(6) All monies from plaintiffs' farming operations deposited with the Clerk are the property of the defendants as their interests may appear.

(7) Causes No. C 75-4024 & C 75-4026 and that portion of C-75-4067 involved in this trial are dismissed, without costs to either party (dated & signed on 5-2-77 — Judge Bogue) (OB 20-192).

5- 6 291 Motion For Stay of the Decree Entered 5-4-77 by Pltf. Omaha Indian Tribe.

5- 9 292 NOTICE OF APPEAL from Decree entered 5-4-77:

Copies mailed by Wm. H. Veeder on 5-9-77 to:

Donald O'Brien, P. O. Box 3223, Sioux City, Iowa 51102.

James L. Clear, Dept. of Justice, Washington, D. C. 20530.

Edson Smith, 3535 Harney St. Omaha, Nebraska 68102.

Thomas R. Burke, S. 1900 First National Center, Omaha, Nebr.

Jack W. Peters, 505-11 Park Bldg. Council Bluffs, Iowa 51501

Peter J. Peters, 233 Pearl St. Council Bluffs, 51501.

Phillip J. Willson, 301 Park Bldg. Council Bluffs, Ia. 51501

Bennett Cullison, Jr. Harlan, Iowa 51537.

Lowell Kindig, 300 Toy Bank Bldg. Sioux City, Iowa 51101.

Maurice B. Nieland, 300 Toy Bank Bldg. Sioux City, Iowa.

Wiley Mayne, 300 Commerce Bldg. Sioux City, Iowa 51101.

Theodore Duffield, 729 Insurance Exchange Bldg. Des Moines, Iowa.

P. L. Nymann, 383 Orpheum Electric Bldg. Sioux City, Iowa.

Certified copies of Notice of Appeal, Letter of Judge Bogue to Attorneys filed 5-4-77; Memorandum Opinion filed 5-4-77; Findings of Fact and Conclusion of Law filed 5-4-77; and Decree filed 5-4-77; Docket sheets of Consolidated cases and docket sheets of cases C 75-4024, C 75-4026 and C 75-4067 mailed to Robert C. Tucker, Clerk, U. S. Court of Appeals, St. Louis, Missouri 53101, by Clerk of U. S. District Court, Sioux City, Iowa.

- 5-11 293 Defts.' Resistance To Motion Of Pltf.'s Omaha Indian Tribe For Stay of Decree Entered May 4, 1977, and Defts.' Motion For Further Relief.
- 5-12 294 NOTICE OF APPEAL by U. S. A. of decree enter 5-4-77: Copies mailed by U. S. Attorney's office to attorneys of record; Certified copies of Notice of Appeal and certified copies of Supplemental docketing mailed to Robert C. Tucker, Clerk, U. S. Court of Appeals, 8th Circuit, St. Louis, Mo. 53101, by Clerk of U. S. District Court, Sioux City, Iowa.
- 5-13 295 Order: clarification of Decree of 5-4-77: Motion of Pltf. Tribe for stay of Decree denied (OB 20-198).
- 5-13 FILED ORDER of Judge Bogue TO TRANSFER EXHIBITS. Exhibits received from Janet M. Hansen, Deputy Clerk, Rapid City on May 13, 1977.
- 1978
- 9-12 296 Motion For Temporary Restraining Order and Preliminary Injunction by State of Iowa.
- 297 Motion For Temporary Restraining Order and Preliminary Injunction by defts. Rupp and Weaver.
- 9-18 298 Tribe's Motion for extension of time.

- 10- 2 299 Tribe's Answer to State of Iowa's Motion for TRO & PI.
- 300 Tribe's Answer to Defts. Rupp & Weaver Motion.
- 10-20 301 Order denying State of Iowa's motion for TRO (OB 22-77).
- 302 Order denying Rupp & Weaver's Motion for TRO (OB 22-78).
- 10-23 303 Order—Cases Nos. 4024, 4026 & 4067, except any portions of said cases already finally disposed of by the undersigned Court, are assigned to the Honorable Edward J. McManus, for disposition (signed by Judge Bogue) (OB 22-79).
- 10-24 304 Pltf.'s petition for temporary restraining order and preliminary injunction w/affidavits attached.
- 305 Order: Monona County & its Board of Supervisors shall forthwith remove barricade erected across the vacated Monona County road, and Defts. Henderson & Durr, & Board of Supervisors are restrained from interfering with the use by the Omaha Indian Tribe of the vacated road and the access thereof; Pretrial hearing on preliminary injunction set for 11:30 A.M. 11-2-78, in S. C. Hearing in courtroom at 1:00 P.M. 11-2-78 (OB 22-80).
- 10-26 306 Order: pursuant to 28 USC Sec. 455 (a), this Court hereby disqualifies itself from hearing or determining any further proceedings in the cases (dated 10-19-78) signed by Andrew W. Bogue (OB 22-82).
- 10-31 307 Tribe's Motion to vacate setting for a pre-trial hearing on 11-2-78 and the hearing on preliminary injunction, w/stipulation in re:

Alma Schmidt Henderson and Gladys Durr attached.

- 11- 2 308 Tribe's Motion for extension of time to have continued the TRO as it pertains to Monona County for 10 days.
- 309 Order (re: Henderson & Durr) pursuant to Stipulation dated 10-31-78 attached. Counsel have agreed to have made permanent the TRO dated 10-24-78 (copy attached); to vacate hearing date on Petition of Tribe for preliminary injunction (OB 22-).
- 310 Order, pursuant to stipulation dated 11-2-78 (attached signed by Allen & Veeder); counsel have agreed to have made permanent TRO dated 10-24-78 (copy attached); Tribe to be responsible for proper road markings & maintenance; to vacate hearing on petition for preliminary injunction; Tribe will maintain a movable "zebra board" for purposes of ingress & egress (OB 22-85).
- 11- 6 311 Marshal's services on Order & Petition for temporary restraining order & preliminary injunction on 10-24 & 10-26 (Fees: \$42.00).

GENERAL DOCKET
UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

Appeal from Northern District of Iowa

Case No. 77-1384

OMAHA INDIAN TRIBE, Treaty of 1854 with the U. S. (10 Stat. 1043), Organized pursuant to the Act of 6/18/34 (48 Stat. 984; 25 USC 476) as amended,

Appellant,

vs.

Roy Tibbals Wilson, Charles G. Lakin, Florence Lakin, R. G. P. Incorporated, an Iowa corporation, Harold Jackson, Otis Peterson, Travelers Insurance Company, The State of Iowa, Darrell L., Harold, Harold M. and Luea Sorenson, State Conservation Commission of the State of Iowa,

Appellees.

William H. Veeder

Attorney for Appellant

Peter J. Peters

Edson Smith

Robert H. Berkshire

Lowell C. Kindig

Thomas R. Burke

Lyman L. Larsen

Bennett Cullison, Jr. for State of Iowa

and State of Iowa Conservation Commission

Attorneys for Appellees

No. Below: C75-4024/C75-2046/C75-4067

Judge Below: Bogue

Date of Judgment: May 4, 1977

Notice of Appeal Filed: May 9, 1977

Date	Nr.	Proceedings
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1977

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|------|---|---|
| 5-11 | 1 | Cert. copies Notice of Appeal, Docket Entries of D. Ct., Copy of D. Ct. Findings of Fact and Judgment and Letter of Judge Bogue dated 5/2/77. |
| 5-11 | 2 | Request for docketing fee. |
| 5-12 | | Docketed appeal. |
| 5-12 | 3 | Appearance for appellant. |
| 5-12 | | Received copies of D. Ct. titles & lawyers (with No. 1). |

- 5-12 4 Appellant's Motion for stay pending appeal, to restore injunction and for immediate hearing.
- 5-13 5 Order: Appellants' motions for stay pending appeal and restoration of injunction are granted and the previous injunction is restored; appellees are given until Tuesday, May 17, 1977, to respond to the motion for stay pending appeal; appeals to be expedited and submitted at the June session in St. Paul, MN.
- 5-16 6 Response and resistance of appellees to motions for stay pending appeal and motion to vacate immediate temporary stay and request for immediate hearing, with 77-1387.
- 5-16 7 Appearance appellees.
- 5-16 8 Certified copy order of District Court, with 77-1387.
- 5-17 9 Appearance appellees.
- 5-19 10 Appearance appellees.
- 5-19 11 Appearance appellees.
- 5-23 Argued and submitted on motion for stay (with 1387) to Judges Lay, Stephenson, Webster. William H. Veeder and Edward Shaker, Dept. of Justice for appellants; Peter J. Peters and Edson Smith for appellees. Rebuttal by Mr. Veeder. Tape to law clerk 8-26
- 5-24 12 Order: Appellant's motion for stay pending appeal and restoration of injunction has been considered by the court and motion for stay pending appeal is granted and the previous injunction restored; court expresses no opinion as to the merits of the appeals; court's previous order about expediting will stand; all briefs will be served and filed on or before June 10, 1977, and case will be submitted to

- the court the week of June 13, 1977, in St. Paul, Minnesota.
- 5-24 13 "Chronology of Significant Farming Problems" etc. submitted by counsel for appellees (with 1387).
- 5-26 Transferred to JUNE session, w/1387.
- 6- 6 14 Mo. aplnt. for lv. to file overlength brief.
- 6- 6 Received overlength brief aplnt.
- 6- 6 RECEIVED ORIGINAL AND 2 COPIES DESIGNATED RECORD, with 1387. 7 VOLS. EACH.
- 6- 7 15 Appendix. To court 6-7.
- 6- 7 16 Order: Appellant's motion for leave to file enlarged brief is granted; clerk directed to file previously tendered sixty-one page brief.
- 6-13 18 Motion of appellant for leave to file reply brief after oral argument.
- 6-13 Arg. & sub. today, Stephenson, Henley. William H. Veeder (tribe) and Edward Shaker, Dept. of Justice for aplnts. Edson Smith and Peter J. Peters for appellees. Concl. by Veeder. Recorded v. 1387.
- 6- 7 17 Brief appellant, Omaha Indian Tribe.
- 6-10 19 Brief of appellees.
- 6-10 20 Appendix to brief of appellees.
- 6-13 21 Appearance appellee.
- 6-13 RECEIVED letter from Nieland that he will not be present for o/a.
- 6-27 22 Reply Brief aplees w/ser.
- 6-27 23 Rep. brf. aplnt.
- 6-27 24 Ser. w/rep. brf. aplnt.
- 6- 5 25 Rec'd. ser. for brf. aplnt. Omaha Indian.

1978

- 4-11 26 Opinion by Judge Lay (Printed & Published) w/77-1387.
- 4-11 27 JUDGMENT: Judgment of Dist. Ct. is vacated & cause is remanded to the district court w/77-1387.
- 4-24 28 Petition of appellees for rehearing w/1387.
- 4-24 29 Suggestion of appellees for rehearing en banc w/1387.
- 4-24 30 Certificate of service of appellees' petition for rehearing and suggestion for en banc w/1387.
- 4-25 31 Appellant's bill of costs.
- 5- 2 32 Order: Petition for rehearing en banc denied; petition for rehearing also denied (with 1387).
- 5-12 33 Mo. appellees for stay of mandate with 1387.
- 5-19 34 ORDER: Issuance of mandate stayed for 30 days from this date. If within that time a petition for writ of certiorari is filed, stay shall continue until final disposition of case by Supreme Court with 77-1387.
- 6- 9 35 Mo. appellees for further stay of mandate, with 77-1387.
- 6-15 36 ORDER: Issuance of mandate stayed until 8/1/78 pending certiorari proceedings (w/77-1387).
- 7-28 Received telephone notification of the docketing of petition for writ of certiorari in Case No. 78-161, State of Iowa and State Conservation Commission of the State of Iowa, Petitioners, v. Omaha Indian Tribe and U. S. A., Respondents, with 77-1387.
- 7-28 Received telephone notification of the docketing of petition for writ of certiorari as Case

- No. 78-160, Roy Tibbals Wilson, Charles Lakin, Petitioners, v. Omaha Indian Tribe and U. S. A., Respondents, with 77-1387.
 - 7-28 Received telephone notification of the docketing of petition for writ of certiorari as Case No. 78-162, R. G. P., Inc., Travelers Insurance Company, and Otis Peterson, Petitioners, v. Omaha Indian Tribe and U. S. A., Resps., with 77-1387.
 - 8- 4 37 Notice of filing petition for writ of certiorari to Supreme Court of United States as Case No. 78-160 (as of 7/28/78), with 77-1387.
 - 8- 4 38 Notice of filing petition for writ of certiorari to Supreme Court of United States as Case No. 78-161 (as of 7/28/78), with 77-1387.
 - 8- 4 39 Notice of filing petition for writ of certiorari to Supreme Court of United States as Case No. 78-162 (as of 7/28/78), with 77-1387.
 - 8- 7 40 Clerk's certificate evidencing the docketing of petition for writ of certiorari in Case No. 78-160, with 77-1387.
 - 8- 7 41 Clerk's certificate evidencing the docketing of petition for writ of certiorari in Case No. 78-161, with 77-1387.
 - 8- 7 42 Clerk's certificate evidencing the docketing of petition for writ of certiorari in Case No. 78-162, with 77-1387.
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GENERAL DOCKET
UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

Appeal from Norther District of Iowa

Case No. 77-1387
with No. 77-1384

United States of America,
Appellant,
vs.

Roy Tibbals Wilson, Charles G. Lakin, Florence Lakin,
R. G. P. Incorporated, an Iowa corporation, Harold Jack-
son, Otis Peterson, Travelers Insurance Company and
the State of Iowa,

Appellees.

James W. Moorman, Department of Justice
Edmund B. Clark, Department of Justice
Raymond N. Zagone, Department of Justice
James J. Clear, Department of Justice
Edward Shawaker, Department of Justice
Attorneys for Appellant

Peter J. Peters
Lowell C. Kindig
Thomas R. Burke
Lyman L. Larsen
Attorneys for Appellees

No. Below: C75-4024

Judge Below: Bogue

Date: May 4, 1977

Notice of Appeal Filed: May 11, 1977

Date Nr. Proceedings
1977

5-12 Docketed Appeal.

- 5-12 1 Motion for Stay Pending Appeal, to Restore Injunction and for Immediate Hearing, & Memorandum in Support.
- 5-12 2 Copies of District Court Memorandum and Order.
- 5-12 3 Appearance for United States, Appellant.
- 5-16 4 Cert. copies Notice of Appeal and Docket Entries (Suppl. to those previously sent in 77-1384).
- 5-13 Order: Appellants' motions for stay pending appeal and restoration of injunction are granted and the previous injunction is restored; appellees are given until Tuesday, May 17, 1977, to respond to the motion for stay pending appeal; appeals to be expedited and submitted at the June session in St. Paul, MN. w/77-1384.
- 5-16 Response and resistance of appellees to motions for stay pending appeal and motion to vacate immediate temporary stay and request for immediate hearing, with 77-1384.
- 5-16 Appearance appellees w/77-1384.
- 5-16 Certified copy order of District Court, with 77-1384.
- 5-19 Appearance appellees w/77-1384.
- 5-19 Appearance appellees w/77-1384.
- 5-23 5 Appearance for appellant.
- 5-24 Order: Appellant's motion for stay pending appeal and restoration of injunction has been considered by the court and motion for stay pending appeal is granted and the previous injunction restored; court expresses no opinion as to the merits of the appeals; court's previous order about expediting will stand;

all briefs will be served and filed on or before June 10, 1977, and case will be submitted to court the week of June 13, 1977, in St. Paul, Minnesota w/77-1384.

- 5-24 Argued and submitted on motion for stay (with 1384) to Judges Lay, Stephenson and Webster. William H. Veeder and Edward Shawaker, Dept. of Justice for appellants; Peter J. Peters and Edson Smith for appellees. Rebuttal by Mr. Veeder.
- 5-24 "Chronology of Significant Farming Problems" etc. submitted by counsel for appellees (with 1384).
- 5-26 Transferred to JUNE session w/1384.
- 6- 6 RECEIVED ORIGINAL AND 2 COPIES DESIGNATED RECORD, with 1384. 7 VOLS. EACH.
- 6-13 Arg. & Sub. to Judges Lay, Stephenson, Henley. William H. Veeder (tribe), Edward Shawaker, Dept. of Justice for aplnts. Edson Smith and Peter J. Peters for appellees. Concl. by Veeder. Recorded w/1384.
- 6- 9 6 *Brf. aplnt.*
- 6- 9 7 *Ser. w/brf. aplnt.*
- 6-10 8 *Brf. aplees w/ser.*
- 7-11 9 *Rep. brf. aplnt.*
- 7-11 10 *Ser. w/rep. brf. aplnt.*
- 1978
- 4-11 Opinion by Judge Lay. (Printed & Published) w/77-1384.
- 4-11 JUDGMENT: Judgment of Dist. Ct. is vacated & cause is remanded to district court, w/77-1384.

- 4-20 11 Appellant's waiver of costs.
- 4-24 Petition of appellees for rehearing w/1384.
- 4-24 Suggestion of appellees for rehearing en banc w/1384.
- 4-24 Certificate of service of appellees' petition for rehearing w/suggestion for en banc, w/a1384.
- 5- 2 Order: Petition for rehearing en banc denied; petition for rehearing also denied (with 1384).
- 5-12 Mo. appellees for stay of mandate, with 1384.
- 5-19 ORDER: Issuance of mandate stayed for 30 days from this date. If within that time a petition for writ of certiorari is filed, stay shall continue until final disposition of the case by the Supreme Court, w/1384.
- 6- 9 Mo. appellees for further stay of mandate, with 1384.
- 6-15 ORDER: Issuance of mandate stayed until 8/1/78 pending certiorari proceedings (w/77-1384).
- 7-28 Received telephone notification of the docketing of petition for writ of certiorari as Case No. 78-161, State of Iowa and State Conservation Commission of the State of Iowa, Petitioners, v. Omaha Indian Tribe and U. S. A., Respondents, with 77-1384.
- 7-28 Received telephone notification of the docketing of petition for writ of certiorari as Case No. 78-160, Roy Tibbals Wilson, Charles Lakin, Petitioners, v. Omaha Indian Tribe and U. S. A., Respondents, with 77-1384.
- 7-28 Received telephone notification of the docketing of petition for writ of certiorari as Case

No. 78-162, R. G. P., Inc., Travelers Insurance Company, and Otis Peterson, Petitioners, v. Omaha Indian Tribe and U. S. A., Respondents, with 77-1384.

- 8- 4 Notice of filing petition for writ of certiorari to Supreme Court of United States as Case No. 78-160 (as of 7/28/78), with 77-1384.
 - 8- 4 Notice of filing petition for writ of certiorari to Supreme Court of United States as Case No. 78-161 (as of 7/28/78), with 77-1384.
 - 8- 4 Notice of filing petition for writ of certiorari to Supreme Court of United States as Case No. 78-162 (as of 7/28/78), with 77-1384.
 - 8- 7 Clerk's certificate evidencing the docketing of petition for writ of certiorari in Case No. 78-160, with 77-1384.
 - 8- 7 Clerk's certificate evidencing the docketing of petition for writ of certiorari in Case No. 78-161, with 77-1384.
 - 8- 7 Clerk's certificate evidencing the docketing of petition for writ of certiorari in Case No. 78-162, with 77-1384.
-

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF IOWA
WESTERN DIVISION

No. C 75-4024

THE UNITED STATES OF AMERICA,

Plaintiff,

vs.

ROY TIBBALS WILSON, CHARLES G. LAKIN,
FLORENCE LAKIN, R. G. P., INCORPORATED, an
Iowa Corporation, HAROLD JACKSON, OTIS PETER-
SON, TRAVELERS INSURANCE COMPANY and the
STATE OF IOWA,

Defendants.

(Filed May 19, 1975)

COMPLAINT TO QUIET TITLE AND
FOR INJUNCTIVE RELIEF

CLAIM I

1. The United States is plaintiff in this action and this court has jurisdiction under 28 U. S. C. 1345.

2. The United States owns land in Monona County, Iowa, which is described as follows:

All descriptions are from the T. H. Barrett Survey.

Township 24 north, Range 10 east, 6th P.M. (Plat approved October 2, 1867).

Section 10, all that portion east of the 1943 Iowa-Nebraska compact line.

Section 11, lots 3, 4, 5, 6 and 7, NW $\frac{1}{4}$ SW $\frac{1}{4}$, S $\frac{1}{2}$ SW $\frac{1}{4}$, and all that portion of lots 1 and 2 east of the 1943 Iowa-Nebraska compact line, except certain lands allotted to individual members of the Tribe and sold to non-members.

Section 13, lots 1, 2, 3 and 4, S $\frac{1}{2}$ N $\frac{1}{2}$, S $\frac{1}{2}$.

Section 14, lot 1, NW $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$, S $\frac{1}{2}$, except certain lands allotted to individual members of the Tribe and sold to non-members.

Section 15, all that portion east of the 1943 Iowa-Nebraska compact line.

Section 22, all that portion east of the east or left bank of the present Missouri River.

Section 23, lots 1 and 2, N $\frac{1}{2}$ NE $\frac{1}{4}$ and NE $\frac{1}{4}$ NW $\frac{1}{4}$, and all that portion of lot 3 and the W $\frac{1}{2}$ NW $\frac{1}{4}$ east of the east or left bank of the present Missouri River.

Section 24, lots 1, 2, 3 and 4.

Township 24 north, Range 11 east 6th P.M. (Plat approved October 2, 1868).

Section 17, lots 1, 2, 3 and 4.

Section 18, lots 1, 2, 3 and 4, S $\frac{1}{2}$ N $\frac{1}{2}$ S $\frac{1}{2}$.

Section 19, lots 1, 2, 3 and 4.

Section 20, all of the fractional section.

The lands described are believed to contain approximately 2900 acres.

In addition to the above-described lands, the plaintiff claims for the use and benefit of the Omaha Tribe of Indians all lands in the bed of the Missouri River as it existed when the Omaha Indian Reservation was created extending from the lands described to the center of the main channel of the River.

3. The lands described in paragraph 2 are a part of the Omaha Indian Reservation to which the United

States holds title for the use and benefit of the Omaha Tribe of Indians.

4. The Omaha Tribe of Indians and members of that Tribe are now in possession of the lands described in paragraph 2.

5. The defendants, or some of them, are claiming some right to title or interest in and to the lands described in paragraph 2 and are asserting the right to possession of those lands. The claims of defendants are null and void and of no effect.

6. The plaintiff is entitled to a judgment quieting its title to the lands described in paragraph 2 to be held for the use and benefit of the Omaha Tribe of Indians, upholding the right of possession of the Omaha Tribe and its members to those lands, and declaring that the defendants have no right to title or interest in and to such lands and no right to the possession thereof.

7. The plaintiff and the Omaha Tribe of Indians will suffer irreparable injury unless judgment is entered by this court upholding their title and right to possession of the lands described in paragraph 2.

WHEREFORE, the plaintiff prays that judgment be entered as follows:

(a) For a preliminary injunction maintaining the Omaha Tribe and its members in possession of the lands described in paragraph 2 hereof until the rights of the parties of this action can be determined by this court.

(b) For a judgment quieting the title of the United States to the lands described in paragraph 2 for the use

and benefit of the Omaha Tribe of Indians; declaring that defendants have no right to title in or to such lands, or any of them; and enjoining the defendants from asserting any title to such lands or interfering in any way with the possession, use and occupancy of such lands by the United States, the Omaha Tribe and its members.

(c) For such other relief as the court may find justified and for the costs of this action.

CLAIM II

8. Plaintiff adopts and incorporates paragraphs 1 through 7 above.

9. Defendants Harold Jackson and Otis Peterson heretofore on or about April 23, 1975, filed a petition in the District Court of Iowa in and for Monona County which appears in the records of that court as Equity No. 18965, a copy of which is attached to this complaint. Named as defendants therein are six Indians in their individual capacity and as representatives of all members of the Omaha Tribe of Nebraska, their agents, employees or representatives.

10. The plaintiffs in Equity No. 18965 claim to be tenants in actual occupancy of a portion of the lands described in paragraph 2 of this complaint and seek Temporary and Permanent Writs of Injunction prohibiting members of the Omaha Tribe from occupying said lands or interfering with Jackson's and Peterson's farming of the land claimed by them. The purpose and effect of the petition in Equity No. 18965 is to challenge the title and possession of the United States and of the Omaha Tribe of Nebraska to those lands claimed by Jackson and Peter-

son. The United States is an indispensable party to Equity No. 18965. It is not a party to Equity No. 18965 and cannot be made a party to that action. By filing this action, the United States has brought before this court all interested parties so that all conflicting claims may be litigated in one action. Any judgment entered in this action will be binding upon the Omaha Tribe of Nebraska and its officers since they are represented by the United States.

11. The United States is entitled to have title to the property claimed by it on its own behalf and on behalf of the Omaha Tribe of Nebraska quieted against any claims by defendants Jackson and Peterson.

12. Equity No. 18965 is an attempt by defendants Jackson and Peterson to wrest possession from the United States and its wards in an action to which the United States is not and cannot be made a party, to the permanent and irreparable injury of the United States and its Indian wards. The mere pendency of the state court action constitutes a threat against and an interference with the substantial rights of the United States and its wards, and threatens the jurisdiction of this court to hear and determine actions brought by the United States to quiet title to land.

WHEREFORE plaintiff prays:

(a) That this court enter an order permanently enjoining defendants Jackson and Peterson, their agents, employees, or assigns and all persons in active concert or participation with them from prosecuting or attempting to prosecute the action entitled Jackson, et al. v. Cline, et al., Equity No. 18965, In the District Court of Iowa in

and for Monona County, insofar as that action relates to any lands described in paragraph 2 of this complaint;

(b) For an order permanently enjoining defendants Jackson and Peterson and their agents, employees, or assigns and all persons in active concert or participation with them from enforcing or attempting to enforce an order entered in Equity No. 18965 on or about May 15, 1975, which plaintiff is informed and believes prohibits certain members of the Omaha Tribe from maintaining possession of a portion of the lands described in paragraph 2 of the complaint and/or prohibiting them from interfering with farming activities by defendants Jackson and Peterson;

(c) For preliminary injunction restraining defendants Jackson and Peterson and their agents, employees or assigns and all persons in active concert or participation with them from prosecuting or attempting to prosecute Equity No. 18965 or enforcing or attempting to enforce the order entered therein on or about May 15, 1975, until the rights of the parties in this action can be determined by this court;

(d) For such other and additional relief as may be just and proper.

EVAN L. HULTMAN
United States Attorney

By /s/ Robert L. Sikma
Assistant United States Attorney
Northern District of Iowa

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
WESTERN DIVISION

No. C 75 4024

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ROY TIBBALS WILSON, et al.,

Defendants.

SEPARATE ANSWER AND COUNTERCLAIM
OF DEFENDANT OTIS PETERSON

Comes now the defendant Otis Peterson and for his answer to the plaintiff's complaint and his counterclaim states:

ANSWER TO CLAIM I

1. He admits the allegations of Paragraph 1 of said Claim I.
2. He denies the allegations of Paragraph 2 of Claim I and alleges that all of the land described in that paragraph has been totally washed away and destroyed by the Missouri River.
3. He denies the allegations of Paragraph 3 of said claim.
4. He denies the allegations of Paragraph 4 of said claim.
5. He denies the allegations of Paragraph 5 of said claim and alleges that he is the tenant under a written lease and an extension thereof, a true copy of which is

attached hereto and made a part hereof, and that his landlord under that lease, RGP, Inc., is the owner of the following described real estate:

(Land description omitted in printing.)

6. He denies the allegations of Paragraph 6 of said claim.

7. He denies the allegations of Paragraph 7 of said claim.

ANSWER TO CLAIM II

8. He incorporates herein as his answer to Paragraph 8 of said Claim II Paragraphs 1 through 7 of his answer to Claim I.

9. He admits the allegations of Paragraph 9 of said claim.

10. He denies the allegations of Paragraph 10 of said claim except that he admits that in the described action in the District Court of Iowa in and for Monona County, he and his co-plaintiff, Harold Jackson, sought temporary and permanent writs of injunction against various named and described persons who had come upon the land with respect to which said persons are tenants and who have interfered with the lawful possession of this defendant and the said Harold Jackson. Temporary injunctions have been granted by that court against the named and described defendants in that action.

11. He denies the allegations of Paragraph 11 of said claim.

12. He denies the allegations of Paragraph 12 of said claim.

COUNTERCLAIM FOR INJUNCTION

13. He incorporates herein the allegations of Paragraph 5 of his answer to Claim I.

14. He incorporates herein the allegations of Paragraphs 9 and 10 of his answer to Claim II.

15. He is entitled to injunctive relief from this Court to maintain his lawful possession of the land of which he is the tenant and to prevent the plaintiff and all other persons from interfering with his right to the possession of that land.

WHEREFORE, defendant, Otis Peterson, prays that the Court dismiss plaintiff's complaint at plaintiff's cost and that the Court enter preliminary and permanent injunctions against plaintiff and all other persons (except defendants, their agents, employees and successors in interest) from interfering with the right to possession of the land described above of which this defendant is the lawful tenant. Said defendant prays for all such other and further general equitable relief as shall be deemed just by the Court.

By /s/ Peter J. Peters
PETERS, CAMPBELL AND PEARSON
233 Pearl Street
Council Bluffs, Iowa 51501
Telephone No. 712-328-3157

Attorneys for Defendant Otis Peterson

(Proof of service omitted in printing.)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
WESTERN DIVISION

NO. C 75-4024

THE UNITED STATES OF AMERICA,
Plaintiff,
vs.

ROY TIBBALS WILSON, et al.,
Defendants.

SEPARATE ANSWER AND COUNTERCLAIM
OF DEFENDANT, HAROLD JACKSON

(Filed June 9, 1975)

Comes now defendant, Harold Jackson, and for his
answer to plaintiff's complaint and counterclaim states:

ANSWER TO CLAIM I

1. He admits the allegations of paragraph 1 of said Claim I.
2. He denies the allegations of paragraph 2 of Claim I and alleges that all of the land described in that paragraph has been destroyed by the Missouri River.
3. He denies the allegations of paragraph 3 of said Claim.
4. He denies the allegations of paragraph 4 of said Claim.
5. He denies the allegations of paragraph 5 of said Claim and alleges that he is the tenant under a written lease, a true copy of which is attached hereto and made a part hereof and that his landlord under that lease, Roy

Tibbals Wilson, is the owner of the following described real estate:

(Land description omitted in printing.)

6. He denies the allegations of paragraph 6 of said Claim.
7. He denies the allegations of paragraph 7 of said Claim.

ANSWER TO CLAIM II

8. He incorporates herein as his answer to paragraph 8 of said Claim II paragraphs 1 through 7 of his answer to Claim I.
9. He admits the allegations of paragraph 9 of said Claim.
10. He denies the allegations of paragraph 10 of said Claim except that he admits that in the described action in the District Court of Iowa, in and for Monona County, he and his co-plaintiff, Otis Peterson, sought temporary and permanent writs of injunction against various named and described persons who had come upon the land with respect to which said persons are tenants and who have interfered with the lawful possession of this defendant and the said Otis Peterson. Temporary injunctions have been granted by that court against the named and described defendants in that action.
11. He denies the allegations of paragraph 11 of said Claim.
12. He denies the allegations of paragraph 12 of said Claim.

COUNTERCLAIM FOR INJUNCTION

13. He incorporates herein the allegations of paragraph 5 of his answer to Claim I of the plaintiff.

14. He incorporates herein by reference paragraphs 9 and 10 of his answer to Claim II of plaintiff.

15. He is entitled to injunctive relief from this court to maintain his lawful possession of the land of which he is the tenant and to prevent plaintiff and all other persons from interfering with his right to possession of that land.

WHEREFORE, defendant, Harold Jackson, prays that the court dismiss plaintiff's complaint at plaintiff's costs and that the court enter preliminary and permanent injunctions against plaintiff and all other persons (except defendants, their agents, employees and successors in interest) from interfering with the right to possession of the land described above of which this defendant is the lawful tenant. Said defendant prays for all such other and further general equitable relief as shall be deemed just by the court in the premises.

KENNEDY, HOLLAND, DeLACEY
& SVOBODA

By /s/ Thomas R. Burke

Suite 1900, One First National Center
Omaha, Nebraska 68102
Telephone No. (302) 342-8200

JOHNSON, STUART, TINLEY,
PETERS & THORN

By /s/ Jack W. Peters

501-511 Park Building
Council Bluffs, Iowa 51501
Telephone No. (712) 322-4033

Attorneys for Defendant, Harold Jackson

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF IOWA
WESTERN DIVISION

No. C 75-4024

THE UNITED STATES OF AMERICA,

Plaintiff,

vs.

ROY TIBBALS WILSON, CHARLES G. LAKIN,
FLORENCE LAKIN, R.G.P., INCORPORATED, an
Iowa Corporation, HAROLD JACKSON, OTIS PETER-
SON, TRAVELERS INSURANCE COMPANY and the
STATE OF IOWA,

Defendants.

ANSWER OF DEFENDANTS ROY TIBBALS
WILSON, CHARLES E. LAKIN, AND
FLORENCE LAKIN

For answer to Claim I of plaintiff's complaint the defendants, Roy Tibbals Wilson, Charles E. Lakin, described as Charles G. Lakin in the caption of plaintiff's complaint, but whose true and correct name is Charles E. Lakin, and Florence Lakin, admit, deny and allege as follows:

1. Admit the allegations of paragraph 1 of said complaint.

2. Deny that the plaintiff owns all or any of the land described in paragraph 2 of said complaint. Admit that in 1867, when the T. H. Barrett Survey was made, land described as in paragraph 2 of said complaint (but of course without reference to the 1943 Iowa-Nebraska Compact Line or to the east or left bank of the Missouri River) existed, not in Monona County, Iowa, but within the borders of the state of Nebraska on the right or Ne-

braska bank of the Missouri River. Said land, between the years 1867 and 1943, was eroded away by the action of the Missouri River and ceased to exist at the described location, having been washed down the river. New land was created between the years 1867 and 1943 by the process of accretion to the left or Iowa bank of the Missouri River, which accretions extended over all of the area of the earth's surface occupied in 1867 by the land described in paragraph 2 of plaintiff's complaint. Said accretion land, upon coming into existence, became the property of the riparian owners on the Iowa bank of the Missouri River to whose land it had accreted. By mesne conveyances from said riparian owners or from persons who obtained title from or against them, the defendants, Roy Tibbals Wilson and Charles E. Lakin, became and are now the owners in fee simple of the portions of said accretion land which fall within the borders of tracts of land owned by them and appropriately described by Iowa section, township and range numbers as follows:

Roy Tibbals Wilson is the owner in fee simple of the following described land situated in Monona County, Iowa:

(Description of land omitted in printing.)

Roy Tibbals Wilson leased the above land to the defendant, Harold Jackson, under written lease dated August 15, 1974 for a term of one year from March 1, 1975 to February 28, 1976, and Jackson is entitled to possession of said land under said lease.

Charles E. Lakin is the owner of the following described land which is situated in Monona County, Iowa:

(Land description omitted in printing.)

3. Admit that the lands described in paragraph 2 of plaintiff's complaint were in 1867 a part of the Omaha Indian Reservation to which the United States held title for the use and benefit of the Omaha Tribe of Indians. However, said title was extinguished when said land ceased to exist when it was eroded away and washed down the river, and these answering defendants deny the allegations of paragraph 3 of plaintiff's complaint.

4. Deny the allegations of paragraph 4 of plaintiff's complaint. The defendants, Roy Tibbals Wilson and Charles E. Lakin, and those through whom they derived title, have, personally and by their tenants, been in possession of their respective lands described in paragraph 2 of this answer for more than thirty years last past, subject only to a brief invasion by members of the Omaha Tribe of Indians in the spring of 1973 which was terminated pursuant to a court order, and a second invasion commencing on April 2, 1975, which invasions have been resisted by the said defendants to the best of their ability. During the above described period of thirty years or more the tillable land included in the tracts described in paragraph 2 hereof has been cleared and rendered productive by these answering defendants and their predecessors in title. The defendant, Harold Jackson, as tenant of the Wilson land, is entitled to possession thereof and has been and is in possession thereof subject only to the interference with his possession by certain members of the Omaha Tribe of Indians commencing April 2, 1975.

5. For answer to paragraph 5 of plaintiff's complaint the defendants, Roy Tibbals Wilson and Charles

E. Lakin, admit that they claim title to the lands as alleged in paragraph 2 hereof, and allege that their titles and ownership are lawful and valid and that the claims of the plaintiff are null and void and of no effect.

6. These answering defendants deny that the plaintiff is entitled to any judgment as asserted in paragraph 6 of plaintiff's complaint, and allege that the defendant Charles E. Lakin is entitled to a judgment quieting title in fee simple in him to the land described in paragraph 2 hereof as owned by him, and upholding his right to possession thereof as against the claims of the plaintiff and the Omaha Tribe of Indians; and that the defendant Roy Tibbals Wilson is entitled to a judgment quieting title in fee simple in him to the land described in paragraph 2 hereof as owned by him, and upholding his right to possession thereof as against the claims of the plaintiff and of the Omaha Tribe of Indians, but subject to the rights of the defendant, Harold Jackson, under his lease above described. The defendants Roy Tibbals Wilson and Charles E. Lakin are entitled to an order declaring that the United States and the Omaha Tribe of Indians have no right, title or interest in or to the lands described in paragraph 2 hereof, and no right to possession thereof.

7. Deny the allegations of paragraph 7 of plaintiff's complaint. The defendants, Roy Tibbals Wilson and Charles E. Lakin and each of them will suffer irreparable injury unless judgment is entered by this Court upholding their title and right to possession of the lands described in paragraph 2 hereof.

8. As an additional and separate defense these answering defendants allege that the defendants Roy Tibbals Wilson and Charles E. Lakin and their predecessors in title have been in open adverse possession of the lands described in paragraph 2 hereof under color of title for more than thirty years prior to the filing of the complaint in this action by plaintiff; that prior to the filing of said complaint the plaintiff had not contested the ownership and possession of said land by said defendants and their predecessors in title but had acquiesced in the same; that plaintiff by its Geological Survey, a part of its Department of the Interior of which the Bureau of Indian Affairs is also a part, in 1966 published a map of the area involved showing on said map the eastern boundary of the Omaha Indian Reservation as being the Missouri River as it existed in 1965; that relying on the foregoing acquiescence and representations of the plaintiff the said defendants and their predecessors in title purchased said land from the apparent owners thereof, cleared it of trees and otherwise prepared it for cultivation, installed irrigation equipment, dug drainage ditches, and paid taxes on said land, all involving great expense to these defendants and their predecessors in title. Also, witnesses who had knowledge of the action of the Missouri River in the vicinity of the land described in paragraph 2 of plaintiff's complaint and in paragraph 2 of this answer, and of what effect such action had with respect to said land, have died and, due to the delay by the plaintiff in asserting its claim, said witnesses are unavailable to testify. By reason of the foregoing these defendants will be greatly prejudiced if the plaintiff is permitted to assert its claim effectively at this time, and

the plaintiff by reason of its laches is estopped from claiming or asserting any title it might otherwise have in said tracts described in paragraph 2 hereof or in any part thereof.

ANSWER TO CLAIM II

For answer to plaintiff's Claim II these answering defendants deny, admit, and allege as follows:

9. Adopt and incorporate their answers heretofore made to paragraphs 1 through 7 of plaintiff's complaint.

10. Admit the allegations of paragraph 9.

11. Deny that the purpose and effect of the petition in equity no. 18965 is to challenge the title and possession of the United States and of the Omaha Tribe of Nebraska to those lands claimed by Jackson and Peterson, and deny that the United States is an indispensable party to equity no. 18965. Admit the other allegations of paragraph 10 of plaintiff's complaint.

12. Deny the allegations of paragraph 11 of plaintiff's complaint.

13. Deny the allegations of paragraph 12 of plaintiff's complaint.

COUNTER-CLAIM

For their counter-claim against the plaintiff the defendants Roy Tibbals Wilson and Charles E. Lakin and Florence Lakin, allege as follows:

14. This court has jurisdiction over this counter-claim by reason of Rule 13 (a) of the Federal Rules of Civil Procedure.

15. These answering defendants adopt and incorporate herein by this reference the allegations in their foregoing answer to plaintiff's complaint. They further adopt and incorporate herein by this reference their "Resistance to Motion Of Plaintiff For Preliminary Injunction", and their "Motion For Preliminary Injunction By Defendants Roy Tibbals Wilson, et al." and renew the prayers thereof.

WHEREFORE, these answering defendants pray that judgment be entered as follows:

(a) Denying the preliminary injunction prayed for by plaintiff and granting these answering defendants a preliminary injunction enjoining plaintiff, the Omaha Tribe of Indians, their agents, employees, members and all other persons acting under their direction, from interfering with the possession of the lands described in paragraph 2 hereof by these defendants and Harold Jackson, the tenant of the defendant Roy Tibbals Wilson, until the rights of the parties to this action have been determined by this Court.

(b) For a judgment quieting the title to the land described in paragraph 2 hereof in the defendants Roy Tibbals Wilson and Charles E. Lakin as their interests are there set forth in fee simple; declaring that the plaintiff, and the Omaha Tribe of Indians and its members have no right, title or interest in said described land, or any part thereof; and enjoining the plaintiff, said tribe and its members, from asserting title to such lands and from interfering in any way with the possession, use and occu-

pancy of said lands by defendants Roy Tibbals Wilson and Charles E. Lakin, and their lessees and assigns.

(c) For such other relief as the Court may find justified and for the costs of this action.

SWARR, MAY, SMITH & ANDERSEN

By /s/ Edson Smith

3535 Harney Street

Omaha, Nebraska 68131

Telephone No.: (402) 341-5421

KENNEDY, HOLLAND DeLACY
& SVOBODA

By /s/ Thomas R. Burke

Suite 1900, One First National Center

Omaha, Nebraska 68102

Telephone No.: (402) 342-8200

JOHNSON, STUART, TINLEY,
PETERS & THORN

By /s/ Jack W. Peters

501-511 Park Building

Council Bluffs, Iowa 51501

Telephone No.: (712) 322-4033

*Attorneys for Defendants Roy Tibbals
Wilson, Charles E. Lakin, Florence
Lakin*

(Proof of service omitted in printing.)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA,
WESTERN DIVISION

No. C 75-4024

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ROY TIBBALS WILSON, et al.,

Defendants.

ANSWER AND COUNTERCLAIM OF DEFENDANT
RGP, INCORPORATED, AN IOWA CORPORATION

For answer to Claim I of Plaintiff's Complaint, the Defendant RGP, Incorporated, an Iowa Corporation, states:

1. It admits the allegations of paragraph 1 of said Complaint.

2. It denies that the Plaintiff owns all or any of the land described in Paragraph 2 of said Complaint, but admits that in 1867 when the T. H. Barrett Survey was made, the land described as in Paragraph 2 of said Complaint (but, of course, without reference to the 1943 Iowa-Nebraska Compact Line or to the east or left bank of the Missouri River) existed, not in Monona County, Iowa, but within the borders of the State of Nebraska on the right or Nebraska bank of the Missouri River. It affirmatively alleges that said land, between the years 1867 and 1943, was eroded and washed away by the action of the Missouri River as it moved in a westerly course and said land therefore ceased to exist at the described location, having been washed down the river. Between the

years 1867 and 1943, new land was created by the process of accretion to the left or Iowa bank of the Missouri River, which accretions extended over all of the area of the earth's surface occupied in 1867 by the land described in Paragraph 2 of Plaintiff's Complaint. Said accretion land, upon coming into existence, became the property of the riparian owners on the Iowa bank of the Missouri River to whose land it had accreted. By mesne conveyances from said riparian owners or from persons who obtained title from or against them, the Defendant RGP, Incorporated, an Iowa Corporation, became and is now the owner in fee simple of portions of said accretion land which fall within the borders of the tracts of land owned by them and appropriately described by Iowa Section, Township and Range numbers as follows:

RGP, Incorporated, an Iowa Corporation, is the owner in fee simple of the following described land situated in Monona County, Iowa.

RGP, Incorporated, an Iowa Corporation, is the successor in title to the above described lands from Raymond G. Peterson, now deceased. Raymond G. Peterson leased the above land to the Defendant, Otis Peterson, under written lease dated March 1, 1957 for a term of 10 years, which lease was then extended by an Extension Agreement dated January 28, 1967 for an additional 10 years or until March 1, 1977, and Otis Peterson is entitled to possession of said land under said lease.

(Land description omitted in printing.)

3. It admits that the lands described in Paragraph 2 of the Plaintiff's Complaint were in 1867 a part of the Omaha Indian Reservation to which the United States held title for the use and benefit of the Omaha Tribe of

Indians. However, it affirmatively alleges that said title was extinguished when said land ceased to exist when it was eroded away and washed down the river and this answering Defendant denies the allegations of Paragraph 3 of Plaintiff's Complaint.

4. It denies the allegations of Paragraph 4 of Plaintiff's Complaint. This Defendant, and those through whom it derived title, have, personally and by their tenants, been in possession of their respective lands described in Paragraph 2 of this Answer for more than 30 years, subject only to a brief invasion by members of the Omaha Tribe of Indians in the Spring of 1973, which was terminated by a Court Order, and a second invasion commencing on April 2, 1975, which invasions have been resisted by this Defendant to the best of its ability. During the above described period of 30 years or more, the tillable land included in the tracts described in Paragraph 2 hereof has been cleared and rendered productive by this answering Defendant and its predecessors in title. The Defendant, Otis Peterson, as tenant of the RGP land, is entitled to possession thereof and has been in possession thereof subject only to the interference with his possession by certain members of the Omaha Tribe of Indians commencing April 2, 1975.

5. For Answer to Paragraph 5 of Plaintiff's Complaint, this Defendant admits that it claims title to the lands as alleged in Paragraph 2 hereof and alleges that its title and ownership are lawful and valid and that the claims of the Plaintiff are null and void and of no effect.

6. This answering Defendant denies that the Plaintiff is entitled to any judgment as asserted in Paragraph 6 of Plaintiff's Complaint and affirmatively alleges that

the Defendant RGP, Incorporated, an Iowa Corporation, is entitled to a judgment quieting title in fee simple in it to the land described in Paragraph 2 hereof as owned by it and upholding its right to possession thereof as against the claims of the Plaintiff and of the Omaha Tribe of Indians, but subject to the rights of the Defendant, Otis Peterson, under his lease above described. This Defendant is entitled to an Order declaring that the United States and the Omaha Tribe of Indians have no right, title or interest in or to the lands described in Paragraph 2 hereof and no right to the possession thereof.

7. This Defendant denies the allegations of Paragraph 7 of Plaintiff's Complaint and affirmatively alleges that it will suffer irreparable injury unless judgment is entered by this Court upholding its title and right to possession of the lands described in Paragraph 2 hereof.

8. As a separate and additional defense, this answering Defendant alleges that RGP, Incorporated, an Iowa Corporation, and its predecessors in title have been in open adverse possession of the lands described in Paragraph 2 hereof under color of title for more than 30 years prior to the filing of the Complaint in this action by the Plaintiff; that prior to the filing of said Complaint, the Plaintiff has not contested the ownership and possession of said land by said Defendant and their predecessors in title, but have acquiesced in the same; that the Plaintiff by its geological survey, a part of its Department of the Interior of which the Bureau of Indian Affairs is also a part, in 1966 established a map of the area involved showing on said map the eastern boundary of the Omaha Indian Reservation as being the Missouri River as it existed in 1965; that relying on the

foregoing acquiescence and representations of the Plaintiffs, this Defendant and its predecessors in title have cleared the land of trees and otherwise prepared it for cultivation, installed irrigation equipment, dug drainage ditches and paid taxes on said land, all involving great expense to this Defendant and its predecessor in title. Also, witnesses who had knowledge of the action of the Missouri River in the vicinity of the land described in Paragraph 2 of Plaintiff's Complaint and in Paragraph 2 of this Answer, and of what effect such action had with respect to said land, have died, and due to the delay by the Plaintiff in asserting its claim, said witnesses are unavailable to testify. By reason of the foregoing, this Defendant will be greatly prejudiced if the Plaintiff is permitted to assert its claim effectively at this time, and the Plaintiff by reason of its laches, is estopped from claiming or asserting any title it might otherwise have in said tracts described in Paragraph 2 hereof or in any part hereof.

ANSWER TO CLAIM II

For Answer to Plaintiff's Claim II, this answering Defendant states:

9. It adopts and incorporates its Answers heretofore made to Paragraphs 1 through 7 of Plaintiff's Complaint.

10. It admits Paragraph 9 of said Complaint.

11. It denies that the purpose and effect of the Petition in Equity No. 18965 is to challenge the title and possession of the United States and of the Omaha Tribe of Nebraska to those lands claimed by Jackson and Peterson, and denies that the United States is an indis-

pensable party to Equity No. 18965. It admits the other allegations of Paragraph 10 of Plaintiff's Complaint.

12. It denies the allegations of Paragraphs 11 and 12 of Plaintiff's Complaint.

COUNTERCLAIM

For its Counterclaim against the Plaintiff, the Defendant RGP, Incorporated, an Iowa Corporation, alleges as follows:

13. This Court has jurisdiction over this Counterclaim by reason of Rule 13 (a) of the Federal Rules of Civil Procedure.

14. This answering Defendant adopts and incorporates herein by this reference the allegations in their foregoing Answer to Plaintiff's Complaint. It further adopts and incorporates herein by this reference its "Resistance to Motion of Plaintiff for Preliminary Injunction", and its "Motion for Preliminary Injunction by Defendants Roy Tibbals Wilson, et al." and renews the prayer thereof.

WHEREFORE, this answering Defendant prays that judgment be entered as follows:

- (a) Denying the Preliminary Injunction prayed for by Plaintiff and granting this answering Defendant a Preliminary Injunction enjoining Plaintiff, the Omaha Tribe of Indians, their agents, employees, members and all other persons acting under their direction, from interfering with the possession of the lands described in Paragraph 2 hereof by this Defendant and Otis Peterson, the tenant of this Defendant, until the rights of the parties to this action have been determined by this Court.

- (b) For a judgment quieting title to the land described in Paragraph 2 hereof in the Defendant RGP, Incorporated, an Iowa Corporation, in fee simple; declaring that the Plaintiff, and the Omaha Tribe of Indians and its members have no right, title or interest in said land, or any part thereof; and enjoining the Plaintiff, said Tribe, and its members from asserting title to such lands and from interfering in any way with the possession, use and occupancy of said lands by this Defendant and its lessees and assigns.
- (c) For such relief as the Court may find justified and for the costs of this action.

PETERS, CAMPBELL
AND PEARSON

By /s/ Peter J. Peters

233 Pearl Street
Council Bluffs, Iowa 51501
Tel: (712) 328-3157

*Attorneys for Defendant RGP,
Incorporated, An Iowa Corporation*

(Proof of service omitted in printing.)

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF IOWA
WESTERN DIVISION

No. C 75-4024

THE UNITED STATES OF AMERICA,

Plaintiff,

vs.

ROY TIBBALS WILSON, CHARLES G. LAKIN,
FLORENCE LAKIN, R.G.P., INCORPORATED, an
Iowa Corporation, HAROLD JACKSON, OTIS PETER-
SON, TRAVELERS INSURANCE COMPANY and the
STATE OF IOWA,

Defendants.

ANSWER OF DEFENDANT STATE OF IOWA

DIVISION I

For answer to claim I of plaintiff's complaint the defendant, State of Iowa, admits, denies, and alleges as follows:

1. Defendant admits the allegation contained in paragraph 1 of plaintiff's complaint.
2. Defendant denies each and every allegation contained in paragraph 2 of plaintiff's complaint.
3. Defendant denies each and every allegation contained in paragraph 3 of plaintiff's complaint.
4. Defendant alleges that she is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 4 of plaintiff's complaint and such allegations are therefore denied.
5. Defendant denies each and every allegation contained in paragraph 5 of plaintiff's complaint except that

defendant admits that she claims title to part of the lands described in paragraph 2 of plaintiff's complaint as alleged in paragraph 5 of plaintiff's complaint and alleges that plaintiff's claims to title and ownership of the state's lands described in paragraph 2 of plaintiff's complaint are null and void and of no effect.

6. Defendant denies each and every allegation contained in paragraph 6 of plaintiff's complaint.

7. Defendant denies each and every allegation contained in paragraph 7 of plaintiff's complaint.

DIVISION II

For answer to plaintiff's claim II this answering defendant denies, admits and alleges as follows:

8. Defendant adopts and incorporates her answers heretofore made to paragraphs 1 through 7 of plaintiff's complaint.

9. Defendant alleges that she is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 9 of plaintiff's complaint in that defendant never received a copy of court record Equity No. 18965 and such allegations are therefore denied.

10. Defendant alleges that she is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 10 of plaintiff's complaint in that the defendant never received a copy of court record Equity No. 18965 and such allegations are therefore denied.

11. Defendant denies each and every allegation contained in paragraph 11 of plaintiff's complaint.

12. Defendant alleges that she is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 12 of plaintiff's complaint in that defendant never received a copy of court record Equity No. 18965 and such allegations are therefore denied.

DIVISION III

13. Further answering, defendant avers that the State of Iowa is a sovereign state of the United States of America, admitted thereto in 1846 under 9 Stat. L. 117.

14. Further answering, defendant avers that the lands described in paragraph 2 of plaintiff's complaint are part of the State of Iowa and that part of said lands are owned by Iowa as sovereign and said description is attached as Exhibit A and hereby made a part hereof.

15. Further answering, defendant avers that the State of Iowa owns the bed of the Missouri River between the thalweg and the ordinary high water mark on the easterly side of said river, and any islands growing up out of that portion of said riverbed and any abandoned channel of that portion of said river.

16. Further answering, defendant avers that the portion of land described by paragraph 2 of plaintiff's complaint which is owned by the State of Iowa and described above is such an island and such abandoned river channel lying on the easterly side of the thalweg of the Missouri River and on the easterly side of the compact line entered into between Iowa and Nebraska in 1942 and approved by Congress in 1943, 57 Stat. L. 495.

17. Further answering, defendant avers that the western boundary of the State of Iowa was established by Congress in 1943 and her rights and the rights of all others including the United States are fixed thereby.

18. Further answering, defendant avers that the United States may not by this action seek to abrogate that act of Congress.

DIVISION IV

19. Further answering, defendant avers that the changing of the channel and degradation of the Missouri River which resulted in Ivy Island being no longer in the river and the rest of Iowa's land becoming abandoned river channel were both caused by the plaintiff thereby estopping plaintiff from claiming such land under an avulsion theory.

20. Further answering, defendant avers that plaintiff should not benefit from its action in moving the channel and causing its degradation.

DIVISION V

21. Further answering, defendant avers that the State of Iowa has right and title in some of the lands described in paragraph 2 of plaintiff's complaint and more specifically described in Exhibit A attached hereto by reason of quit claim deeds executed to defendant State of Iowa and filed and recorded in the Office of the Monona County Recorder on May 25, 1965, Book 77 Land Deeds page 233, and May 25, 1965, Book 77 Land Deeds page 238.

22. Further answering, defendant avers that title to any part of said lands described in paragraph 2 of plaintiff's complaint or more precisely described in this answer which were a part of the Omaha Indian Reservation was extinguished when said land eroded away, ceased to exist, and washed down the Missouri River and defendant avers that her land was newly created on the easterly side of said river by accretion, island building and degradation of the bed of the river.

DIVISION VI COUNTER-CLAIM

For a counter-claim against the plaintiff the defendant State of Iowa alleges as follows:

23. This court has jurisdiction over this counter-claim by reason of Rule 13 (a) of the Federal Rules of Civil Procedure.

24. The defendant State of Iowa adopts by reference its answers in paragraphs 1 through 22, above, as if fully set forth.

25. An accurate legal description of the land owned by the State of Iowa is annexed hereto and marked Exhibit "A".

WHEREFORE, the defendant State of Iowa prays that judgment be entered quieting title to the land described in Exhibit "A", annexed hereto, in the defendant State of Iowa in fee simple, declaring that plaintiff, and the Omaha Indian Tribe and its members have no right, title or interest in said described land, or any part thereof; enjoining the plaintiff, said tribe and its members

from asserting title to such lands and from interfering in any way with the possession, use and occupancy of said lands by the defendant State of Iowa, dismissing plaintiff's complaint at plaintiff's costs, and granting such other and further relief as to the Court may seem just.

RICHARD C. TURNER
Attorney General of Iowa

CLIFFORD E. PETERSON
JAMES C. DAVIS
Assistant Attorneys General

/s/ Bennett Cullison, Jr.

P. O. Box 68
Harlan, Iowa 51537
Telephone: (712) 755-2192

Attorneys for Defendant State of Iowa

(Certificate of service and description of land omitted in printing.)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
WESTERN DIVISION

Civil No. C-75-4024

UNITED STATES OF AMERICA,
Plaintiff,
vs.

ROY TIBBALS WILSON, et al.,
Defendants.

PLAINTIFF'S REPLY TO COUNTERCLAIM OF DEFENDANTS ROY TIBBALS WILSON, CHARLES E. LAKIN AND FLORENCE LAKIN

In response to the counterclaim found in paragraphs 14 and 15 of defendants' answer, plaintiff states:

1. This court lacks jurisdiction to quiet title, in favor of defendants, to lands held in trust for Indians by the United States, 28 U. S. C. 2409a (Supp. III); F. R. Civ. P. 13 (d).

2. Plaintiff adopts each and every allegation contained in the complaint and denies any of defendants' allegations inconsistent therewith.

WHEREFORE, plaintiff prays that defendants' counterclaim be dismissed.

/s/ Evan L. Hultman
United States Attorney

/s/ Robert L. Sikma
Assistant United States Attorney

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
WESTERN DIVISION

Civil No. C-75-4024

UNITED STATES OF AMERICA,
Plaintiff,
vs.

ROY TIBBALS WILSON, et al.,
Defendants.

PLAINTIFF'S REPLY TO COUNTERCLAIM OF DEFENDANT RGP, INC.

In response to the counterclaim found in paragraphs 13 and 14 of defendant's answer, plaintiff states:

1. This court lacks jurisdiction to quiet title, in favor of defendant, to lands held in trust for Indians by the United States. 28 U. S. C. 2409a (Supp. III); F. R. Civ. P. 13 (d).

2. Plaintiff adopts each and every allegation contained in the complaint and denies any of defendant's allegations inconsistent therewith.

WHEREFORE, plaintiff prays that defendant's counterclaim be dismissed.

/s/ Evan L. Hultman
United States Attorney

/s/ Robert L. Sikma
Assistant United States Attorney

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
WESTERN DIVISION

Civil No. C-75-4024

UNITED STATES OF AMERICA,
Plaintiff,
vs.
ROY TIBBALS WILSON, et al.,
Defendants.

ANSWER TO STATE OF IOWA'S COUNTERCLAIM

Now comes the United States of America, by and through its attorney, and answers the counterclaim of the State of Iowa, which is contained in its amendment to the State's answer, as follows:

23. Admit.

24. Plaintiff admits that the State of Iowa adopts by reference its answers contained in paragraphs 1 through 22 of the answer. Plaintiff denies the allegations contained in paragraphs 14 and 15 of the answer, admits the allegation in paragraph 16 that some of the lands claimed by the State of Iowa are in an abandoned river channel lying east of the easterly side of the present thalweg of the current Missouri River and east of the 1943 compact line, but denies all other allegations contained therein. Plaintiff admits the allegation contained in paragraph 17 of the answer insofar as it states that the boundary of the State of Iowa was fixed in 1943, but denies any implication that the title to the lands involved

in this litigation was thereby affected. Plaintiff also denies the legal conclusion in paragraph 19 of the answer which states that plaintiff is estopped from asserting its claim. Plaintiff also denies the allegations contained in paragraphs 21 and 22 of the answer.

25. Plaintiff denies that the State of Iowa owns the land described in the State's Exhibit A.

Respectfully submitted,

/s/ James J. Clear
Attorney

Department of Justice
Washington, D. C. 20530
Telephone: (202) 739-2445

Attorney for Plaintiff
United States of America

(Certificate of service omitted in printing.)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
WESTERN DIVISION

Civil No. C-75-4024

UNITED STATES OF AMERICA,
Plaintiff,
vs.
ROY TIBBALS WILSON, et al.,
Defendants.

PLAINTIFF'S REPLY TO COUNTERCLAIM
OF DEFENDANT OTIS PETERSON

(Filed August 12, 1975)

In response to the counterclaim contained in paragraphs 13-15 of defendant's answer, plaintiff states:

1. This court is without jurisdiction to grant defendant a possessory interest in lands held in trust for Indians by the United States. 28 U.S.C. 2409a (Supp. III); F. R. Civ. P. 13 (d).

2. Plaintiff admits that defendant, as alleged in paragraph 5 of his answer to Claim I, which is incorporated by reference into paragraph 13 of his counterclaim, has a lease with RGP, Inc., but denies that RGP, Inc., is the owner of the leased land or has any authority to lease said lands.

3. Plaintiff admits the allegations, contained in paragraphs 9 and 10 of defendant's answer to Claim II, and incorporated by reference into paragraph 14 of the counterclaim, except insofar as they allege that defendant and Harold Jackson were in lawful possession.

4. Plaintiff adopts each and every allegation contained in the Complaint and denies any of defendant's allegations inconsistent therewith.

WHEREFORE, plaintiff prays that the counterclaim be dismissed.

/s/ Evan L. Hultman
United States Attorney

/s/ Robert L. Sikma
Assistant United States Attorney

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
WESTERN DIVISION

Civil No. C-75-4024

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ROY TIBBALS WILSON, et al.,

Defendants.

PLAINTIFF'S REPLY TO COUNTERCLAIM
OF DEFENDANT HAROLD JACKSON

(Filed August 12, 1975)

In response to the counterclaim contained in paragraphs 13-15 of defendant's answer, plaintiff states:

1. This court is without jurisdiction to grant defendant a possessory interest in lands held in trust for Indians by the United States. 28 U.S.C. 2409a (Supp. III); F. R. Civ. P. 13 (d).

2. Plaintiff admits the allegation, contained in paragraph 5 of defendant's answer to Claim I and incorporated by reference into paragraph 13 of the counterclaim, that defendant has a lease with Roy Tibbals Wilson but denies that Roy Tibbals Wilson is the owner of the lands so leased or that he has any authority to lease said lands.

3. Plaintiff admits the allegations, contained in paragraphs 9 and 10 of defendant's answer to Claim II and incorporated by reference into paragraph 14 of the counterclaim, except insofar as they allege that the defendant and Otis Peterson were in lawful possession of the land in dispute.

4. Plaintiff adopts each and every allegation contained in the complaint and denies any of defendant's allegations inconsistent therewith.

WHEREFORE, plaintiff prays that defendant's counterclaim be dismissed.

/s/ Evan L. Hultman
United States Attorney

/s/ Robert L. Sikma
Assistant United States Attorney

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
WESTERN DIVISION

NO. C 75-4026

OMAHA INDIAN TRIBE, organized Indian Tribe pursuant to the Act of June 18, 1934 (48 Stat. 984), as amended,

Plaintiff,

vs.

HAROLD JACKSON and OTIS PETERSON, and the DISTRICT COURT OF IOWA IN AND FOR MONONA COUNTY,

Defendants.

COMPLAINT FOR INJUNCTION, FOR A STAY
OF STATE COURT PROCEEDINGS
AND OTHER RELIEF

(Filed May 20, 1975)

COMES NOW the Omaha Indian Tribe, organized under a constitution and by-laws ratified by the Tribe on February 15, 1936, and approved by the Secretary of the

Interior, trustee for the Omaha Indian Tribe, on March 30, 1936, pursuant to Section 16 of the Act of June 18, 1934 (48 Stat. 984), as amended by the Act of June 15, 1935 (49 Stat. 378), and hereby alleges, avers and complains that:

1. The United States is holder of the lands involved herein, in trust for the Omaha Tribe of Nebraska, and this Court has jurisdiction under 28 U.S.C. 1345 (see attached Brief).

This Court also has jurisdiction under Title 28, Section 2283, United States Code, as the relief sought, in part, is a stay of the State Court proceedings outlined herein. Further, the cause herein involves the Omaha Tribe of Nebraska and certain Iowa defendants; that the value of the lands involved exceeds \$10,000.00, and jurisdiction is further present by reason of Title 28, Section 1332.

2. This action is being filed at this time after a proper resolution has been passed by the Tribal Council and after due and careful consideration by said body.

3. The above-named defendants Harold Jackson and Otis Peterson, without any clear right or title, assert that they will proceed by trespass, if they have not already done so, or if they are not restrained by the Court, upon the lands of the Omaha Indian Tribe, which lands are now and have always been part of the Omaha Indians Reservation, created pursuant to the Treaty of March 16, 1854 (10 Stat. 1043), all as surveyed by the General Land Office of the Department of the Interior in the years 1867-68, said survey being the only official survey of said land. Those lands are now and have always been

held in trust for the Omaha Indian Tribe by the United States of America, which lands are now and have been held by the Omaha Indian Tribe pursuant to the direction, assistance and cooperation of the Bureau of Indian Affairs, Department of Interior, United States of America, in peaceful, actual and constructive possession of said lands, they having been fully posted and notice given that those lands are now and have been part of the Omaha Indian Reservation, and that any trespass upon those lands is a clear violation of the criminal statutes of the United States of America; attached hereto and made a part hereof is a plat and legal description of the lands in question, said plat and description being marked Exhibit "A" and made a part of this complaint by reference, the lands being hereafter referred to as the Blackbird Bend Area of the Omaha Indian Reservation.

4. The above-named defendants, Harold Jackson and Otis Peterson, by their threats to trespass upon the Blackbird Bend Area of the Omaha Indian Reservation, which are held in trust for the Omaha Indian Tribe by the United States of America, threaten to cause and will cause immediate, irreparable damage to the Omaha Indian Tribe if the aforesaid defendants, Harold Jackson and Otis Peterson, carry out their threat to trespass on these lands, and that their threat to trespass places in jeopardy the lives and property of the Omaha Indian Tribe, who are now and have been, all as averred above, in peaceful occupation of the land with the full cooperation and protection of the aforesaid agents of the United States of America, the Commissioner of Indian Affairs, and his staff. There is attached hereto and made a part hereof a Memorandum of Law dated February 3, 1975, from the

principal law office of the Department of the Interior, the Honorable Kent Frizzell, who has set forth in that Solicitor's Opinion as chief law officer of the Department of Interior, and declared, among other things, as follows:

"I have concluded for the reasons that follow that the Bureau's position is legally correct and that the lands in question have been a part of the Omaha Indian Reservation since 1854, owned in trust for the Tribe by the United States."

A copy of the aforesaid opinion by the Solicitor, Kent Frizzell, Chief Legal Officer of the Department of Interior, is attached hereto and made a part of this complaint and marked Exhibit "B".

5. The above-named defendants, Harold Jackson and Otis Peterson, filed an action in the District Court of Iowa in and for Monona County in furtherance of their trespass and threatened trespass upon the land of the Omaha Indian Tribe, and to threaten the peaceful occupancy and possession of the Omaha Indian Tribe and the civil rights of each of the members of that Tribe did obtain an order dated May 15, 1975, from the aforesaid District Court of Iowa in and for Monona County purporting to restrain the following individually-named persons, not the Omaha Indian Tribe nor the United States of America, trustee, said individually-named persons being Edward L. Cline, Dan Webster, Bruce Marr, William Webster, Joe Fremont and Louis Webster, Jr., from entering upon certain lands and interfering with the farming of those lands by the above-named defendants, and further, did on May 16, 1975 obtain a supplemental order, Ex. C., purporting to restrain all persons from entering on said lands, said lands being described in the aforesaid order

dated May 15, 1975, and are not the same lands comprising the Blackbird Bend Area of the Omaha Indian Reservation, all as described in the attached plat and description, Exhibit "A", of this complaint, but rather are lands described by an illegal and unauthorized survey made in clear violation of the criminal laws of the United States of America, particularly 25 U. S. C. 180.

6. Neither the order of May 15, 1975 nor the one of May 16, 1975 are directed to nor do they in any way pertain to the Omaha Indian Tribe nor to the United States of America, trustee for the Omaha Indian Tribe, nor do they relate exactly to the Blackbird Bend Area of the Omaha Indian Reservation, and are therefore null and void and of no force and effect by reason of the want of jurisdiction in the aforesaid District Court of Iowa in and for Monona County over either the Omaha Indian Tribe or the United States of America over the lands comprising the Blackbird Bend Area of the Omaha Indian Reservation. The aforesaid Omaha Indian Tribe and the United States of America, trustee, are indispensable parties to any action involving the Blackbird Bend Area of the Omaha Indian Reservation, and therefore, the above-mentioned orders, as averred above, are null and void and of no force and effect, and the entry upon the Blackbird Bend Area, as threatened by the above-named defendants, Harold Jackson and Otis Peterson, pursuant to the aforesaid null and void order of May 15, 1975, or the order of May 16, 1975, would constitute a trespass upon those lands in clear violation of the rights of the Omaha Tribe and the criminal statutes of the United States of America, trustee for the Omaha Indian Tribe.

7. That the United States of America has filed a quiet title action in this Court, No. C-75-4024, asking for injunctive relief and the quieting of title; it is the strong belief of the Omaha Tribe of Nebraska, as set out in the Resolutions and Affidavit attached hereto, Ex. D, that said action is untimely and is in effect a conduit to permit and allow the defendants to retake possession of the lands involved during the extended period involved in a quiet title action; said quiet title action was filed over the protests of the Omaha Tribe of Nebraska and should not be entertained in any other light by this Court. The Tribe is now in possession and should be permitted to retain said possession, as the lands are clearly theirs.

8. That this plaintiff will be irreparably damaged if the Stay is not issued and if the injunction is not permitted by this Court.

WHEREFORE, the plaintiff prays for:

1. A stay of the injunction and the supplemental injunction issued in the District Court of Iowa in and for Monona County under Title 28, Section 2283, United States Code, restraining the Court, Monona County officials and the defendants herein or any other parties from enforcing or attempting to enforce said injunction.

2. For a preliminary injunction maintaining the Omaha Tribe in possession of the lands involved herein until the rights of the parties can be determined by this Court.

3. For a permanent injunction maintaining the Omaha Tribe of Nebraska in possession of their rightful lands.

4. For relief of this plaintiff of any *ex parte* rulings or orders that it does not support in cause No. C-75-4024 now pending in this Court.

5. An order of this Court setting a hearing and providing for notice to the defendants of said hearing.

6. For such other relief as the Court may find justified.

O'BRIEN & O'BRIEN

By /s/ John T. O'Brien

916 Grandview Boulevard

Sioux City, Iowa 51101

Ph. (712) 255-0147

Attorneys for Plaintiff

EXHIBIT B (Exhibit A omitted in printing.)

UNITED STATES
DEPARTMENT OF THE INTERIOR

Office of the Solicitor
Washington, D. C. 20240

SEAL

In Reply Refer To:

February 3, 1975

Memorandum

To: Commissioner of Indian Affairs

From: Solicitor Kent Frizzell

Subject: Proposed Secretarial Boundary, Blackbird Bend Area, Omaha Indian Reservation, Iowa and Nebraska

By memorandum of October 15, 1974, the Acting Deputy Commissioner asked this Office to review a proposed Secretarial proclamation concerning part of the eastern boundary of the Omaha Indian Reservation and the own-

ership of approximately 3,190 acres of land, presently located within the States of Iowa and Nebraska.

The Bureau had concluded as a matter of policy that the proclamation should be issued, recognizing that the land in question is, and has been since 1854, within the boundaries of the Omaha Indian Reservation, owned by the United States in trust for the Omaha Tribe.

I have concluded, for the reasons that follow, that the Bureau's position is legally correct, and that the lands in question have been a part of the Omaha Indian Reservation since 1854, owned in trust for the Tribe by the United States. Rather than proceeding by Secretarial proclamation, I recommend that we request the Department of Justice to file appropriate legal actions quieting title to these lands in the United States in trust for the Tribe. If you concur, please advise me and we will proceed forthwith.

My more detailed legal analysis follows.

"Blackbird Bend" is a land area of some 3,190 acres, presently located in the States of Iowa and Nebraska. Originally, these lands were an oxbow area, all on the west bank of the Missouri River. The center line of that river forms the reservation boundary.¹ The general legal doctrine is that a riparian landowner has title to lands which gradually accrete to his property. But a sudden "avulsive" change freezes all land titles as of the time immediately before it occurs. I have reviewed the facts as investigated by the Bureau, and conclude as it did that

¹ In terms of natural fluctuations, the river has vacillated significantly since 1854, while the Blackbird Bend Area itself has remained remarkably stable.

the Blackbird Bend Area was separated from the west bank of the Missouri River by an avulsive change. Accordingly, the Tribe retains full equitable title to the lands in question.

A. Establishment of the Omaha Reservation

The United States negotiated a treaty with the Omaha Tribe on March 16, 1854, which authorized the establishment of the present Omaha Reservation. 2 Kappler, Indian Affairs, Laws and Treaties, 611-14; 10 Stat. 1043. The Omaha Tribe ceded to the United States all of its land,

. . . south of a line drawn due west from a point in the center of the main channel of said Missouri River due east of where the Ayoway River disembogues out of the bluffs, to the western boundary of the Omaha country . . . 2 Kappler, *supra*, at 611.

The remaining Omaha land north of this line was to be set aside for a reservation, subject to the approval of the Tribe. According to a letter dated May 11, 1855, from the Secretary of the Interior to the Commissioner of Indian Affairs, the Omahas rejected the proposed location of the reservation. Exercising their prerogative under the 1854 treaty, the Tribe selected the present reservation in the area of the Blackbird Hills instead. Because the actual site of the reservation had not been finalized as of the date of the 1854 treaty, no precise description of its boundaries was included in the treaty. Distinct boundaries were established though, as evidenced by the Congressional purchase in the Treaty of March 6, 1865 of the northern part of the reservation for the Winnebago Indians:

The Omaha Tribe of Indians do hereby cede, sell and convey to the United States a tract of land from

the north side of their present reservation, vis: commencing at a point on the Missouri River four miles due south from the north boundary line of said reservation, thence west ten miles, thence south four miles, thence west to the western boundary line of the reservation, then north to the northern boundary line thence east to the Missouri River, and thence south along the river to the place of beginning. 2 Kappler, *supra*, 872; 14 Stat. 667.

The first attempted official survey of the Omaha Reservation was in the spring of 1855 by Deputy Surveyor Wallace Barnum. No copy of the plat of this survey has been located. The earliest existing survey of the reservation's boundaries was completed in 1866-67. During April and May of 1866, Deputy Surveyor Theodore Barrett followed the field notes of the previous Barnum expedition. The resulting Barrett survey is the earliest official survey for the Blackbird Bend Area. Inspection of the Barrett survey clearly shows that in 1866, the Blackbird Bend oxbow was within the exterior boundary of the Omaha Reservation. There is no other survey which conflicts with the Barrett survey. The only possible conclusion is that the Blackbird Bend Area was within the original boundaries of the reservation.

B. Subsequent Events

I have concluded that no subsequent events altered the reservation boundaries or title to the land. I will discuss in order of their occurrence those events which might be thought to have had such an effect on the Omaha Reservation.

1. *Iowa and Nebraska Statehood Acts*

The general rule is that Indian property rights are unaffected by the admission into the Union of states which include reservations within their boundaries. The Supreme Court in *United States v. Winans*, 198 U.S. 371, 382 (1905), rejected the contention that "... the [treaty] rights conferred upon the Indians are subordinate to the powers acquired by the state upon its admission to the Union." Iowa was admitted into the Union in 1846, eight years before the treaty establishing the Omaha Reservation. Act of December 28, 1846, 9 Stat. 117. Iowa's constitution sets out its western-most jurisdictional boundary as the:

... middle of the main channel of the Missouri River; thence up the middle main channel, of the said Missouri River to a point opposite the middle of the main channel of the Big Sioux River . . . 1 Iowa Code Ann. 91.

The 1804 Lewis and Clark map, the 1851 official survey of the State of Iowa, and the 1875 map of Monona County, Iowa, all show the Blackbird Bend oxbow's location on the *western* bank of the Missouri River—beyond the jurisdiction of Iowa.

Nebraska became a territory shortly after the 1854 treaty, Act of May 30, 1854, 10 Stat. 277. That Act expressly preserved the treaty rights of the Indian Tribes within the territory, and reaffirmed the Federal Government's plenary power to deal with the Indians.²

2 "... Provided further, that nothing in this Act contained shall be construed to impair the rights of person or property now pertaining to the Indians in said territory, so long as such rights remain unextinguished by treaty between the United States and such Indians . . ." *Id.* § 1.

This act reaffirmed the Omaha Tribe's right to the Blackbird Bend Area and rebuts any suggestion that the act contained a Congressional modification of the Treaty of 1854. Similarly, the Nebraska Statehood Act lacked explicit or implicit changes in that Treaty. Act of April 19, 1864, 13 Stat. 47. Thus, while the Omaha Reservation was located within the delineated boundaries of Nebraska, its trust status as federally protected land remained unchanged. Unaffected by the statehood of either Iowa or Nebraska, the boundary of the Blackbird Bend Area, as surveyed in 1867, remained intact.

2. *The Allotment Acts*

The Allotment Act of August 7, 1882, 22 Stat. 341, carved off a portion of the western end of the Omaha Reservation and opened it up for sale and settlement. Since Blackbird Bend is located on the reservation's eastern edge, it was not affected by this cession of land. However, Section 5 of the Act did extend to Blackbird Bend by proclaiming that the remaining unceded land be allotted to individual Indians, any surplus being patented to the Omaha Tribe under a trust period of 25 years. An amendment to the Act of 1882 was enacted on March 3, 1893, 27 Stat. 612, which further reduced the amount of surplus tribal land through additional allotments. Finally, under the Act of June 25, 1910, 36 Stat. 855, the remaining surplus lands of the Omaha Tribe were authorized to be sold.

Despite the above authorizations for sales and allotments, the Blackbird Bend oxbow has primarily remained unallotted tribal land to this day. Of the few allotments that were made, the vast majority were relinquished back to the Tribe for more suitable allotments outside the oxbow.

Only a small section of the Blackbird Bend Area was ever allotted and then patented to non-Indians, and title to that land is not being disputed.³ In any event, the recent case of *Mattz v. Arnatt*, 412 U. S. 481 (1973), rejected the claim that the opening of a reservation for settlement reduced or eliminated the reservation's boundaries. Accord, *United States v. Celestine*, 215 U. S. 278 (1909).

The only permissible conclusion, therefore, is that the enumerated Allotment Acts had no effect on the title to the Blackbird Bend Area.

3. *The 1943 Boundary Compact Between Iowa and Nebraska*

The original common boundary of Iowa and Nebraska is defined by the location of the middle of the main channel of the Missouri River. Act of December 28, 1846, 9 Stat. 117; Act of April 19, 1864, 13 Stat. 47. The Compact of 1943 represented an attempt by the two states to settle their boundary disputes once and for all. The Army Corps of Engineers had drawn up plans to stabilize the Missouri River through an extensive channelization project. The Compact of 1943 designated the middle of the main channel of the proposed, rerouted Missouri River as the new boundary between the two states. Because of World War II, the Corps' project was postponed. When it was resumed in 1948, the proposed channel was redesigned—changing the location of the river from that relied upon in the 1943 Compact. Thus, the attempt to clarify

³ See generally Plate 19, "Omaha Indian Reservation Boundary Determination—Missouri River—Blackbird Bend Area", E. M. Clark and Associates, Summary Report of September 16, 1974.

the boundary in 1943 ended in the utter confusion in 1948. The two states were left with a 1943 boundary line that bore little relationship to the new location of the Missouri River. Indeed, the 1943 line has never been accurately pin-pointed. However, the Bureau's approximation of the 1943 boundary shows that the Blackbird Bend Area of the Omaha Reservation is now located in Iowa.

It is my opinion that the 1943 Compact had no effect on the Omaha Tribe's right to Blackbird Bend. Congressional assent to the Compact cannot be considered evidence of a Congressional intent to modify the boundary and proprietary rights of the 1854 treaty. The Compact Clause of the Constitution, Article I, § 10, cl. 3, was added as a check against the erosion of federal powers by the compacting states. *Virginia v. Tennessee*, 148 U. S. 503 (1893). Congressional approval of a compact merely indicates that it contains no objectionable usurpation of the powers assigned to the national government. *Pennsylvania v. Wheeling and Belmont Bridge Co.*, 59 U. S. 421, 433 (1855). It does not serve to make the compact a law of the United States. *Henderson v. Delaware River Joint Toll Bridge Commission*, 562 Pa. 475, 66 A.2d 843; *cert. denied*, 536 U. S. 856 (1949). The 1943 Compact does not mention the Omaha Reservation or the 1854 treaty. The approval of such a compact can in no way be construed as satisfying the requirement that takings of Indian trust property must be specifically authorized by Congress. *E.g., Menominee Tribe v. United States*, 391 U. S. 404 (1968); *United States v. Santa Fe Pacific R.R.*, 314 U. S. 339 (1941). Moreover, the Compact itself provides that titles good in Nebraska will be unimpaired by the jurisdictional shift to Iowa. 1 Iowa Code Annotated 85, 89.

The only permissible conclusion is that the Omaha Treaty rights to the Blackbird Bend Area—as delineated by the 1867 survey—are as valid in Iowa as they were in Nebraska.

4. *The Rechannelization of the Missouri River*

As indicated above, the Army Corps of Engineers undertook a program in the 1940s to rechannelize the Missouri River to reduce flooding and to stabilize the location of the river. The rechannelization had the effect of cutting the Blackbird Bend oxbow off from the rest of the reservation. The oxbow became part of the eastern bank of the Missouri River for the first time. Not only had it shifted to Iowa's jurisdiction under the 1943 Compact, but geophysically, it became contiguous with the eastern bank due to the cessation of flow around the oxbow.

A central tenet of property law is that avulsive changes in the course of a river leave title to the riparian lands unaffected. *Philadelphia Co. v. Stimson*, 223 U. S. 605 (1912); *Nebraska v. Iowa*, 145 U. S. 853 (1891); *Arkansas v. Tennessee*, 246 U. S. 158 (1917). The court in *Philadelphia Co.* stated:

It is when the change in the stream is sudden or violent, and visible, that the title remains the same. It is not enough that the change may be discerned by comparison at two distinct points of time. It must be perceptible when it takes place. *Id.*, at 624.

This test for avulsion has been applied to man-made, as well as to natural, shifts in a river's bed. *Anderson-Tully Company v. Walls*, 266 F. Supp. 804 (1967). The abrupt diversion of the Missouri River across the base of the Blackbird Bend oxbow was visible and perceptible. Under

the authority of *Philadelphia Co.*, *supra*, and *Nebraska v. Iowa*, *supra*, the rechannelization project was avulsive in nature. Accordingly, the treaty rights to the Blackbird Bend Area remained unchanged. Title continued in the United States, in trust for the Omaha Tribe.

5. *Adverse Possession of the Blackbird Bend Area within the 1867 survey*

Once the oxbow of Blackbird Bend was severed from the rest of the reservation, non-Indians along the former eastern bank of the river moved onto the land without color of title. Those farmers from Iowa, no longer separated from the Blackbird Bend Area by the Missouri River, began planting and farming the land in disregard of the treaty rights of the Omahas. The trespassers appear to claim title through adverse possession, quiet title actions, and deed transfers among themselves. The courts have consistently rejected attempts to adversely possess Indian land. *United States v. 7,405.3 Acres of Land in Macon, Clay, and Main Counties*, 97 F. 2d 417 (C. C. A. N. C. 1856); *United States v. Russell*, 261 F. Supp. 196 (D. C. Okla. 1965). Private parties cannot claim adverse possession against lands held by the United States. *Proctor v. Palatur*, 15 F. 2d 974 (C. C. A. Wash. 1926). There is no way that the trespassers could get valid title to the Blackbird Bend Area under the doctrine of adverse possession.

Similarly ineffective were the quiet title actions brought in Iowa's courts. The major suit in this group was in Equity No. 17400, *Charles E. Lakin v. State of Iowa, et al.*, decree filed with Monona Co. Clerk of District Court on November 15, 1963. State courts have no jurisdiction

over controversies concerning title to Indian allotments during the trust period. *McKay v. Kalyton*, 204 U. S. 458 (1907); *Caesar v. Kraw*, 71 Okla. 233, 175 P. 927 (1920). Equally defective for these suits is the failure to include the United States as an indispensable party. *Fontenelle v. Omaha Tribe of Nebraska*, 430 F. 2d 143 (6th Cir. 1970). The conspicuous omission of the United States as a party emphasizes the spurious nature of the suits.

It is also relevant to note that Iowa did not add the Blackbird Bend Area to its tax rolls until 1969. This was 26 years after the 1943 Compact shifted Iowa's boundary to encompass the Blackbird Bend Area, and at least 10 years after rechannelization made the area contiguous with the original land mass of Iowa. The relative lateness of this action is at least some evidence that Iowa, until recently, may have considered the Blackbird Bend Area tax-exempt tribal land.⁴

C. Legal Conclusions and Recommended Action

The title claims of the present occupants of Blackbird Bend can be summarized quite succinctly: they had no rights in the land to begin with and they have no rights in it now. Title searches have failed to discover any patents from the United States to the present occupants. The doctrine of adverse possession is inapplicable and the quiet title actions have lacked proper jurisdiction. The 1943 Boundary Compact and the Missouri River rechannelization project have left the 1854 treaty rights intact. Only one legal conclusion is permissible: title to the

⁴ The Supreme Court has ruled that tribal land within a reservation is free from state taxation. *The Kansas Indians*, 5 Wall. 737 (1866).

Blackbird Bend Area within the 1867 survey is still held by the United States in trust for the Omaha Tribe.

Eviction proceedings should be initiated under 25 U. S. C. § 180, as should actions to quiet title in the Omaha Tribe and to recover monetary damages in the form of back rentals.

EXHIBIT C

IN THE DISTRICT COURT OF IOWA IN AND FOR MONONA COUNTY

Equity No. 18965

HAROLD JACKSON and OTIS PETERSON,

Plaintiffs,

vs.

EDWARD L. CLINE, et al.,

Defendants.

ORDER DIRECTING ISSUANCE OF TEMPORARY WRIT OF INJUNCTION

(Filed May 16, 1975)

NOW on this 16th day of May, 1975, this matter comes before the Court on the filing of plaintiffs' First Amendment to the Petition and equity on file herein, and the request by plaintiffs for the issuance of a Temporary Writ of Injunction, without notice, and the Court, after examination of the Amendment to the Petition and attached Exhibit "E", and after being otherwise fully advised in the premises, finds that this Court should enter an Order granting the plaintiffs relief as asked for as against the remaining defendants in this case in order to make the Order of Court entered herein on May 15,

1975, effectual; that by reason thereof, a Temporary Writ of Injunction should issue by the Clerk of this Court, without notice, and without additional bond, enjoining and restraining the other defendants from the acts alleged in said Petition; and it is, therefore,

ORDERED by the Court that the Clerk of this Court shall issue a Temporary Writ of Injunction, without notice, and without additional bond herein by plaintiffs, in the name of John Doe and Jane Doe, enjoining and restraining said persons from coming upon any portion of the real estate described as:

(Land description omitted in printing)

and from interfering with the farming of said land and the raising of crops thereon by the plaintiffs, their agents and employees; and it is further

ORDERED by the Court that the Clerk shall deliver said Temporary Writ of Injunction to the Sheriff of this County who shall serve the same upon any persons found upon said real estate, other than the plaintiffs, their agents and employees, and the Sheriff shall ascertain the names of said persons and list their names on the Return of such Temporary Writ of Injunction.

R. R. BRANNON

Judge of the 3rd Judicial District of Iowa
and the provisions of such writ shall apply to such persons who are served as soon as the sheriff files the return of service with the clerk of this court.

(Exhibit D and Affidavit omitted in printing.)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
WESTERN DIVISION

No. C 75-4024

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ROY TIBBALS WILSON, et al.,

Defendants.

No. C 75-4026

OMAHA INDIAN TRIBE, etc.,

Plaintiff,

vs.

HAROLD JACKSON, et al.,

Defendants.

ORDER

(Filed June 5, 1975)

This matter is before the court on resisted cross-applications for preliminary injunctions, filed in No. C 75-4024 on May 19, 1975 by plaintiff and on May 22, 1975 by defendants, and filed in No. C 75-4026 on May 20, 1975 by plaintiff and on May 28, 1975 by defendants. The applications for preliminary injunctions have been submitted for decision by the court upon the briefs and the record filed herein.

The controversy here involves the ownership of and possessory rights to an area of land comprising approximately 3000 acres bordering on the Missouri River in Western Iowa. During the mid-nineteenth century, the

lands in question were located on the Nebraska side of the Missouri River, circumscribed by an oxbow of the River known as Blackbird Bend.

As indicated by the Barrett survey of 1867, the Blackbird Bend Area of Nebraska was encompassed within the boundaries of the Omaha Indian Reservation, established pursuant to the treaty of March 16, 1854, 10 Stat. 1043,¹ with title in the United States as trustee for the Omaha Indian Tribe. The dispute arises as to the subsequent geophysical history of the contested lands.

The plaintiff in each case contends that the Blackbird Bend Area became located on the eastern bank² through an avulsive change in the course of the Missouri River caused by channelization projects carried on by the Corps of Engineers during the 1940's. An avulsive change in the River's course would not alter the status of title to the riparian lands. *Arkansas v. Tennessee*, 246 U. S. 158, 38 S. Ct. 301, 62 L. Ed. 638 (1917); *Nebraska v. Iowa*, 145 U. S. 519, 12 S. Ct. 976, 36 L. Ed. 798 (1891).

Defendants contend that the disputed lands have formed through accretion to the previous eastern shore of the River. Accretions to riparian land are added to the title ownership of the landowner. *Arkansas v. Tennessee*,

¹ The Omaha Tribe, exercising a prerogative under the treaty, selected the actual situs of the reservation in lieu of the description found in the treaty. See *Omaha Tribe v. United States*, 4 Ind. Cl. Comm. 627 (1957).

² This area became a part of Iowa when the States of Iowa and Nebraska agreed to fix their boundary line through the Boundary Compact of 1943. See *Nebraska v. Iowa*, 406 U. S. 117, 120 n. 4, 92 S. Ct. 1379, 31 L. Ed. 2d 733 (1972).

supra. Defendants are successors in interest to the allegedly accreted lands in this case.

The disputed area has been cleared and farmed since some time in the 1940's. Defendants Harold Jackson and Otis Peterson have leased the contested premises for the current crop year from Roy T. Wilson and Raymond G. Peterson, respectively. During April of this year, members of the Omaha Tribe, acting under authority of the Tribal Council, have entered upon the lands and posted signs declaring the area to be part of the Omaha Reservation. Bureau of Indian Affairs (BIA) officials assisted them in delimiting the boundaries.

Harold Jackson and Otis Peterson instituted an equity action on April 23 in Iowa District Court for Monona County³ seeking to enjoin members of the Tribe from entering upon the contested real estate. On May 16,⁴ following an amendment to the petition, the Iowa District Court issued a temporary writ of injunction restraining all members of the Tribe from entering upon said lands or interfering with the farming thereof by the plaintiffs in that case.

The United States in No. C 75-4024 seeks to quiet title to all lands in the Blackbird Bend area which allegedly remain a part of the Omaha Indian Reservation. The United States also prays for preliminary and permanent injunctions restraining defendants from prosecuting Equity No.

³ Equity No. 18965, District Court of the State of Iowa in and for Monona County.

⁴ On May 15, the court issued an order enjoining only certain named members of the Tribe from entering upon the disputed area.

18965 in the State court, from attempting to enforce the aforementioned orders of the State court, and from interfering with the possession, use, or occupancy of the lands in question by the Tribe.

In No. C 75-4026, the Omaha Tribe eschews a quiet title action, asserting that the institution of such an action by the United States is an ineffectual way for the Government to protect its ownership rights as trustee in the contested lands. Preliminary and permanent injunctions similar to those in No. C 75-4024 are sought by the Tribe, and the applications for preliminary injunction in both cases are therefore being considered simultaneously in this ruling. Defendants in each action seek a preliminary injunction enjoining all persons other than the defendants from interfering with possession of the contested lands by the defendants.

The granting of a preliminary injunction rests within the sound discretion of the court, with the burden on the applicant to show a substantial probability of success on the merits and irreparable injury absent issuance of an injunction. The two other factors to be considered are the likelihood of harm resulting to other parties to the proceedings, and the nature of any public interest to be served by granting the injunction. *Minnesota Bearing Co. v. White Motor Corp.*, 470 F.2d 1323, 1326 (8th Cir. 1973); *Allison v. Froehlke*, 470 F. 2d 1123, 1126 (5th Cir. 1972); *Behagen v. Intercollegiate Conference of Faculty Rep.*, 346 F. Supp. 602, 603-604 (D. Minn. 1972).

Considering these factors as applied to this case, it is the court's view that plaintiffs are entitled to some form of a preliminary injunction.

It is undisputed that the Blackbird Bend area was previously within the Reservation boundary. The staff of the BIA has concluded, and the Solicitor of the Interior Department concurred in the conclusion, that approximately 3,190 acres in the Blackbird Bend region were still owned by the United States as part of the Reservation. Other than conclusory statements, defendants have produced no evidence to the contrary at this time.

The irreparable injury to be incurred here is the total loss of a growing season if one party or the other is not promptly prohibited from interfering with the other's attempts to farm the land. At present the apprehensiveness on both sides has prevented all but 160 acres of corn from being planted in the area.

The probability of financial injury to the defendants, tenants and purported landowners of the area in question, is substantial, but will be reduced by the court's form of injunction as set out below, which will require the net profits from this year's farming operation to be deposited with the Clerk of Court pending final determination of the quiet title action.

Finally, the public interest in this case must favor the protection of Indian possessory rights to lands set aside in trust for them pursuant to a treaty. Congress has expressed its desire to protect the interests of Indians in real property by prohibiting conveyance of such lands without the consent of the government. 25 USC §177; *United States v. 7,405.3 Acres of Land*, 97 F.2d 417 (4th Cir. 1938). A preliminary injunction is an appropriate provisional remedy when special federally protected rights of Indians are threatened. *Organized Village of Kake v.*

Egan, 80 S. Ct. 33, 4 L. Ed. 2d 34, 1959) (Brennan, J., acting in capacity of circuit justice).

Defendants argue that a preliminary injunction is intended to maintain the status quo, 7 *Moore's Federal Practice* §65.04[1], and the status quo is defined as the last uncontested status which preceded the pending controversy. *Tanner Motor Livery, Ltd. v. Avis, Inc.*, 316 F. 2d 804, 808-809 (9th Cir. 1963); *Westinghouse Electric Corp. v. Free Sewing Machine Co.*, 256 F. 2d 806, 808 (7th Cir. 1958). It is asserted by defendants that their possession in previous years was the last peaceable and uncontested occupancy, and that granting plaintiffs a preliminary injunction essentially awards them relief to which they would only be entitled upon a favorable determination on the merits.

The court cannot agree. The record reflects that members of the Tribe have never totally acquiesced in defendants' use of the land, and the Monona County Assessor apparently felt unsure enough of the status of title to omit these lands from the tax rolls for many years. Perhaps the true uncontested status was many years ago before the Missouri River changed its course. But most significantly, the court views the present occupation by the Omaha Tribe, with the approval of the Tribal Council acting pursuant to its authority under 25 USC §476, and with the assistance of the BIA acting in its capacity as an executive agency, constitutes the status quo to be preserved. Designees of the Tribal Council have planted 160 acres and tilled another 500 acres, the only farm work done this spring in the area.

Since the United States is here seeking an injunction to prevent threatened irreparable injury to a federally

protected interest, to wit, possession of and title to lands originally owned by the United States in trust for the Omaha Indians, the prohibition against enjoining state court proceedings in 28 USC §2283 is not applicable here. *Leiter Minerals, Inc. v. United States*, 352 U.S. 220, 77 S. Ct. 287, 1 L. Ed. 2d 267 (1957); *United States v. Akin*, 504 F. 2d 115 (10th Cir. 1974) (United States suing as trustee of water rights held on behalf of Indian tribes).

The State of Iowa entered a special appearance in this matter to contest jurisdiction because of improper service. Though subsequently served, the State argues that the delayed notice has prevented it from preparing detailed exhibits and arguments. The State asks that the land to which it claims an interest, and which is not under cultivation, be exempted from any injunctive decree. No accurate legal description of this property having been submitted, the court is unable to specifically position or exempt this parcel, but will entertain a motion for relief from the decree should the State deem it necessary.

It is therefore

ORDERED

1. Defendants' applications for preliminary injunction denied.
2. Plaintiffs' applications for preliminary injunction granted.
3. Each and every defendant, his agents, employees, and successors in interest, is hereby enjoined and restrained from interfering with the use and occupancy of the lands hereinafter described by the Omaha Tribe and its individual members, agents, employees or designees, and from prosecuting or attempting to prosecute that action

heretofore filed in the District Court of Iowa in and for Monona County, entitled *Jackson, et al. v. Cline, et al.*, Equity No. 18965, and from attempting to enforce any orders in said state court action directing any individual member of the tribe to vacate any portion of the lands hereinafter described, or any such orders permitting any of the defendants herein to occupy any portion of said lands, until such time as this case may be heard and final judgment entered. This order shall apply to all lands described as follows, and which are east of the 1943 Iowa Nebraska compact line and which have not been allotted to individual members of the Omaha Tribe and thereafter sold to nonmembers:

(Land description omitted in printing.)

4. Plaintiff Omaha Indian Tribe shall deposit with the Clerk of Court the net profits received for all crops harvested from the aforesaid lands during the calendar year 1975, together with a report of receipts and disbursements.

June 5, 1975.

/s/ Edward J. McManus
Chief Judge, United States District Court

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF IOWA
WESTERN DIVISION

NO. C 75-4026

OMAHA INDIAN TRIBE, etc.,
Plaintiff,

vs.

HAROLD JACKSON, et al.,
Defendants.

SEPARATE ANSWER AND COUNTERCLAIM
OF DEFENDANT, HAROLD JACKSON

(Filed June 9, 1975)

Comes now defendant, Harold Jackson, and for answer to the complaint of plaintiff and for counterclaim states:

ANSWER TO COMPLAINT

1. He denies the allegations of paragraph 1 of said complaint except that he admits that the value of the land which is at issue in this case exceeds \$10,000.00 and that the court has jurisdiction of this case under the provisions of Title 28, Section 1332 of the United States Code.

2. He denies the allegations of paragraph 2 of said complaint.

3. He denies the allegations of paragraph 3 of said complaint and alleges that he is the lawful tenant under a written lease, a true copy of which is attached hereto and made a part hereof, and further alleges that his landlord, Roy Tibbals Wilson, is the owner of the following described real estate:

(Description of land omitted in printing.)

He further alleges that the land described in Exhibit A attached to plaintiff's complaint has been totally destroyed by the Missouri River.

4. He denies the allegations of paragraph 4 of said complaint and alleges that he is lawfully entitled to possession of the land described in his lease and further alleges that plaintiff has no right or interest in that land.

5. He denies the allegations of paragraph 5 of said complaint except that he admits that he and defendant, Otis Peterson, filed an action in the District Court of Iowa, in and for Monona County, for injunctive relief to protect

their lawful possession of land described in their petition in that action. That injunctive relief has been granted by the District Court.

6. He denies the allegations of paragraph 6 of said complaint except that he admits that the Monona County case relates to the present land in place and not to the destroyed land described in said complaint.

7. He denies the allegations of paragraph 7 of said complaint except that he admits that the United States of America has filed a quiet title action in this court which is No. C 75-4024.

8. He denies the allegation of paragraph 8 of said complaint.

COUNTERCLAIM

9. He incorporates herein the affirmative allegations of his answer to plaintiff's complaint stated in paragraphs 1 through 8 inclusive above.

10. He is entitled to injunctive relief from this court against plaintiff to safeguard his lawful possession under the lease, a true copy of which is attached hereto, with respect to the land owned by his landlord, Roy Tibbals Wilson, described above.

WHEREFORE, defendant prays that plaintiff's complaint be dismissed at the cost of plaintiff and that the court grant preliminary and permanent injunctions in favor of defendant, Harold Jackson, against plaintiff restraining plaintiff from interfering with the lawful possession by this defendant of the land owned by his landlord, Roy Tibbals Wilson, more particularly described above. Said defendant prays for all just other and further general

equitable relief as shall be deemed just by the court in the premises.

(Certificate of service and exhibits omitted in printing.)

IN THE UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF IOWA WESTERN DIVISION

No. C-75-4026

OMAHA INDIAN TRIBE, etc.,

Plaintiff,

vs.

HAROLD JACKSON, et al.,

Defendants.

SEPARATE ANSWER AND COUNTERCLAIM OF DEFENDANT, OTIS PETERSON

(Filed June 16, 1975)

Comes now the defendant, Otis Peterson, and for his answer to the complaint of the plaintiff and for his counterclaim states:

ANSWER TO COMPLAINT

1. He denies the allegations of Paragraph 1 of said complaint except that he admits that the value of the land which is at issue in this case exceeds \$10,000.00 and that the Court has jurisdiction of this case under the provisions of Title 28, Section 1332 of the United States Code.

2. He denies the allegations of Paragraph 2 of said complaint.

3. He denies the allegations of Paragraph 3 of said complaint and alleges that he is the lawful tenant under a written lease, as extended, a true copy of said extension being attached hereto and made a part hereof, and further alleges that his landlord, RCP, Inc., is the owner of the following described real estate:

(Land description omitted in printing.)

He further alleges that the land described in Exhibit A attached to plaintiff's complaint has been previously totally washed away and destroyed by the Missouri River.

4. He denies the allegations of Paragraph 4 of said complaint and alleges that he is lawfully entitled to possession of the land described in his lease and further alleges that plaintiff has no right or interest in that land.

5. He denies the allegations of Paragraph 5 of said complaint except that he admits that he and the defendant Harold Jackson filed an action in the District Court of Iowa in and for Monona County for injunctive relief to protect their lawful possession of land described in their petition in that action. That injunctive relief has been granted by the District Court.

(Rest of Answer and Counterclaim omitted in printing.)

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF IOWA
WESTERN DIVISION

NO. C-75-4026

OMAHA INDIAN TRIBE, etc.,
Plaintiff,
vs.

HAROLD JACKSON, et al.,
Defendants.

ANSWER OF INTERVENING DEFENDANTS
ROY TIBBALS WILSON AND
CHARLES E. LAKIN

(Filed August 26, 1975)

For answer to the plaintiff's complaint the intervening defendants, Roy Tibbals Wilson and Charles E. Lakin, admit, deny and allege as follows:

1. Admit that the Omaha Indian Tribe is organized under a constitution and by-laws duly ratified and approved as required by law. Said constitution and by-laws or charter authorizes and empowers said Tribe to sue and to be sued, and this court has jurisdiction over said plaintiff in this action. Admit that the lands which constitute the Omaha Indian Reservation are held by the United States in trust for the Omaha Tribe of Nebraska, but deny that the lands involved in this suit, the lands described in Exhibit "A" attached to plaintiff's complaint, are a part of said reservation and deny that they are held in trust by the United States for the Omaha Tribe of Nebraska. Admit

that this action involves the Omaha Tribe of Nebraska and certain Iowa defendants; that the value of the lands involved exceed \$10,000.00, and that the court has jurisdiction by reason of Title 18, Section 1332. These intervening defendants deny the other allegations contained in paragraph 1 of plaintiff's complaint.

2. These intervening defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 2 of plaintiff's complaint and therefore deny the same.

3. Deny that either the plaintiff or the United States of America owns all or any part of the land described in Exhibit "A", attached to plaintiff's complaint, and deny that all or any of said land is a part of the Omaha Indian Reservation, and deny that it is held in trust by the United States of America for the Omaha Indian Tribe. Admit that in April and May of 1867, when the General Land Office survey was made by T. H. Barrett, surveyor, land which could be described as in Exhibit "A" attached to plaintiff's complaint (but of course without reference to the 1943 Iowa - Nebraska Compact Line or to the east or left bank of the Missouri River) existed, not in Monona County, Iowa, but within the borders of the state of Nebraska on the right or Nebraska bank of the Missouri River. All of said land east of said Iowa - Nebraska Compact Line between the years 1867 and 1943 was eroded away by the action of the Missouri River and ceased to exist at the described location, having been washed down the river. New land was created between the years 1867 and 1943 by the process of accretion to the left or Iowa bank of the Missouri River, which accretions extended over all of the area of the earth's surface occupied in 1867 by the land described in said Ex-

hibit "A" east of the 1943 Iowa - Nebraska Compact Line. Land was thereafter added by the process of accretion to the left or Iowa bank of the Missouri River west of said Compact Line and east of the present Missouri River channel. All of said accretion land upon its coming into existence became the property of the riparian owners on the Iowa bank of the Missouri River to whose land it had accreted. By mesne conveyances from said riparian owners or from persons who obtained title from or against them, the defendants, Roy Tibbals Wilson and Charles E. Lakin, became and are now the owners in fee simple of the portions of said accretion land which fall within the borders of tracts of land owned by them and appropriately described by Iowa section, township and range numbers as follows:

Roy Tibbals Wilson is the owner in fee simple of the following described land situated in Monona County, Iowa:

(Land description omitted in printing)

Roy Tibbals Wilson leased the above land to the defendant, Harold Jackson, under written lease dated August 15, 1974, for a term of one year from March 1, 1975, to February 28, 1976, and Harold Jackson is entitled to possession of said land under said lease.

Charles E. Lakin is the owner of the following described land which is situated in Monona County, Iowa:

(Land description omitted in printing.)

Although the land described in said Exhibit "A" was in 1867 a part of the Omaha Indian Reservation to which the United States held title for the use and benefit of the Omaha Tribe of Indians, said title was extinguished when said land ceased to exist when it was eroded away and

washed down the river. These intervening defendants deny each and every allegation of paragraph 3 of plaintiff's complaint not hereinabove admitted.

4. Deny each and every allegation of paragraph 4 of plaintiff's complaint. The memorandum from solicitor Kent Frizzell to Commissioner of Indian Affairs dated February 3, 1975, attached to plaintiff's complaint as Exhibit "B" and the allegations of paragraph 4 of plaintiff's complaint with respect thereto are immaterial and impertinent. Said memo consists of the opinions and conclusions of the writer thereof which are of no evidentiary value and are inadmissible in evidence. These intervening defendants move that said memo and allegations with respect thereto be stricken from plaintiff's complaint. The intervening defendants, Roy Tibbals Wilson and Charles E. Lakin, and those through whom they derived title, had, personally and by their tenants, been in actual, peaceable, non-contested possession of their respective lands described in paragraph 3 of this answer for more than thirty years prior to the commencement of this action, subject only to a brief invasion by members of the Omaha Tribe of Indians in the spring of 1973 which was terminated pursuant to a court order, and a second invasion commencing on April 2, 1975, which invasions have been resisted by the said intervening defendants and by the defendant Harold Jackson, to the best of their ability. During the above described period of thirty years or more the tillable land included in the tract described in paragraph 3 hereof has been cleared and rendered productive by these intervening defendants and their predecessors in title. The defendant, Harold Jackson, as tenant of the Wilson land described in paragraph 3 hereof, is entitled to possession thereof and prior

to the commencement of this action had been in possession thereof subject only to the interference with his possession by certain members of the Omaha Tribe of Indians in the spring of 1973 and again commencing April 2, 1975.

5. Deny each and every allegation of paragraph 5 of plaintiff's complaint except those hereinafter admitted. Admit and allege that the defendants Harold Jackson and Otis Peterson filed an action in the District Court of Iowa in and for Monona County which action is captioned "Harold Jackson and Otis Peterson, Plaintiffs, v. Edward L. Cline; Matthew Grant; Clifford Wolfe, Sr.; Eddie Wolfe; Lawrence Gilpin; and Charles McCullough; individually and as representing all persons who are members of the Omaha Tribe of Nebraska, or their agents, employees or representatives, and any and all other persons who claim any right to possession of 3,100 acres of land, more or less, in Monona County, Iowa, Defendants," Equity No. 18965, and after notice and hearing, at which Robert L. Sikma, Assistant United States Attorney, appeared for the United States and Donald E. O'Brien, attorney, appeared for the Omaha Tribe of Indians, that court issued an order on May 15, 1975, restraining Edward L. Cline, Dan Webster, Bruce Marr, William Webster, Joe Fremont and Lewis Webster, Jr., from entering upon certain lands therein described, and interfering with the farming of those lands by said Jackson and Peterson; and that Jackson and Peterson did on May 16, 1975, obtain a supplemental order from said court restraining all persons other than said Jackson and Peterson, their agents and employees, from coming on said land therein described the same as in the May 15 order, and from interfering with the farming of said land and the raising of crops thereon by the said Jackson and Peterson; that

Exhibit "C" attached to plaintiff's complaint herein is a copy of said order of May 16, 1975.

6. Deny each and every allegation of paragraph 6 of plaintiff's complaint.

7. Admit that the United States of America has filed a quiet title action in this court, No. C-75-4024, asking for injunctive relief and the quieting of title. Deny each and every other allegation contained in paragraph 7 of plaintiff's complaint.

8. Deny the allegations of paragraph 8 of plaintiff's complaint.

9. These intervening defendants deny that the plaintiff is entitled to any judgment as claimed in plaintiff's complaint, and allege that the defendant Charles E. Lakin, is entitled to a judgment quieting title in fee simple in him to the land described in paragraph 3 hereof as owned by him, and upholding his right to possession thereof as against the claims of the plaintiff and the Omaha Tribe of Indians; and that the defendant Roy Tibbals Wilson is entitled to a judgment quieting title in fee simple in him to the land described in paragraph 3 hereof as owned by him, and upholding his right to possession thereof as against the claims of the plaintiff, but subject to the rights of the defendant, Harold Jackson, under his lease above described. The defendants Roy Tibbals Wilson and Charles E. Lakin are entitled to an order declaring that the Omaha Tribe of Indians has no right, title or interest in or to the lands described in paragraph 3 hereof, and no right to possession thereof.

10. As an additional and separate defense these intervening defendants allege that the defendants Roy Tibbals

Wilson and Charles E. Lakin and their predecessors in title have been in open adverse possession of the lands described in paragraph 3 hereof under color of title for more than thirty years prior to the filing of the complaint in this action by plaintiff; that prior to April 2, 1975, the plaintiff had not contested the ownership and possession of said land by said defendants and their predecessors in title but had acquiesced in the same; that relying on the foregoing acquiescence of the plaintiff the said defendants and their predecessors in title purchased said land from the apparent owners thereof, cleared it of trees and otherwise prepared it for cultivation, installed irrigation equipment, dug drainage ditches, and paid taxes on said land, all involving great expense to these defendants and their predecessors in title. Also, witnesses who had knowledge of the action of the Missouri River in the vicinity of the land described in Exhibit A attached to plaintiff's complaint and in paragraph 3 of this answer, and of what effect such action had with respect to said land, have died and, due to the delay by the plaintiff in asserting its claim, said witnesses are unavailable to testify. By reason of the foregoing these defendants will be greatly prejudiced if the plaintiff is permitted to assert its claim effectively at this time, and the plaintiff by reason of its laches is estopped from claiming or asserting any title it might otherwise have in said tracts described in paragraph 3 hereof or in any part thereof.

COUNTERCLAIM

For their counterclaim against the plaintiff these intervening defendants allege as follows:

11. This court has jurisdiction over this counterclaim by reason of rule 24(a) and rule 13(a) of the Federal Rules of Civil Procedure.

12. These intervening defendants adopt and incorporate herein by this reference the allegations in their foregoing answer to plaintiff's complaint.

WHEREFORE, these intervening defendants pray that judgment be entered as follows:

(a) Setting aside the order of this court granting plaintiff's application for preliminary injunction; dissolving the preliminary injunction heretofore issued by this court; and granting a preliminary injunction to the defendants herein enjoining and restraining the plaintiff, Omaha Indian Tribe, its individual members, agents, employees, and other persons acting under or by their direction, from interfering with the possession and use of the lands described in paragraph 3 hereof by these intervening defendants and by Harold Jackson, the tenant of the defendant Roy Tibbals Wilson, until the rights of the parties to this action have been finally determined by this court.

(b) For a judgment quieting the title to the land described in paragraph 3 hereof in the defendants Roy Tibbals Wilson and Charles E. Lakin as their interests are there set forth, in fee simple; declaring that the plaintiff, the Omaha Tribe of Indians, and its members, have no right, title or interest in said described land or any part thereof; and enjoining the plaintiff, its agents, employees, members, and other persons acting under their direction, from asserting title to such lands and from interfering in any way with the possession, use and occupancy of said land by defendants Roy Tibbals Wilson and Charles E. Lakin, and their lessees and assigns.

(c) For such other relief as the court may find justified and for the costs of this action.

(Signatures and proof of service omitted in printing.)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
WESTERN DIVISION

NO. C-75-4067

OMAHA INDIAN TRIBE, Treaty of 1854 with the United States (10 Stat. 1043), Organized pursuant to the Act of June 18, 1934 (48 Stat. 984; 25 U. S. C. 476) as amended,

Plaintiff,

vs.

DEFENDANTS:

TRACT I—BLACKBIRD BEND AREA

Agricultural & Industrial Investment Company; American Telephone & Telegraph Company; Benjamin, Edith; Benjamin, Herbert Nelson; Benjamin, Maurice Louis; Benson, James Brooks; Bentley, Helen; Boulden, George R.; Bolden, Matilda; Bolden, Vasco; Cox, Cleo; Craford, John K.; Craford, M. George; Craford, Ruth; Dale, Phyllis; Durr, Gladys; Fletcher, Lloyd; Follett, Frank Carlton; Great Lakes Pipeline Company; Henderson, Alma Schmidt; Iowa Public Service Company; Jackson, Harold; Jenkins, Letha; Kane, Rose Ann; Kirk, Bertha; Kirk, Harriet; Kiskadon, Mary Ann; Lakin, Charles E.; Lakin, Florence; Larson, Albert J.; Est Lund, John H.; Lund, Ruth J.; Magnolia Pipeline Company; McCoy, Ethel; Mid-American Pipeline Company; Mid-Continent Eastern Pipeline Corporation; Monona County Rural Electric Cooperative; Northern Natural Gas Company; Orr, Arthur; Orr, Robert; Peterson, Otis; R. G. P. Incorporated, an Iowa Corporation; Ruth, Anena; Ruth, George C.; Ruth, Richard A.; Ruth, Jean M.; Sanders, Fred; Sanders, Fred E.; Sanders, Rosalie; Socony Vacuum Oil Company; Sorenson, Darrell L.; Sorenson, Harold; Sorenson, Harold M.; Sorenson, Luea; Stangel, Ferd; State of Iowa, State of Iowa Conservation Commission; Torticilli, Edward L.; Torticilli, Mary A.; Torticilli, Regina Marie; Travelers Insurance Company; Virtue, Ariel; Virtue, W. W.; Willaday Farms, Inc.; Willey, Ross O.; Willey, Vincent R.;

Williams Brothers Pipeline Company; Wilson, Roy Tibbals;

TRACT II—MONONA BEND AREA

Agricultural & Industrial Investment Company; Anderson, Karen; Anderson, Richard L.; Carlson, Eva; Carlson, Harold; Carter, Mildred Orr; Clark, Hazel; Clark, Kenneth; Christensen, Chris; Dahl, Barbara; Dahl, Clara Grace; Dahl, Gordon; Dufrene, Doris; Dufrene, Harold B.; Everett, Myrva; Everett, R. J.; Fender, Lloyd P.; Fender, Verna Pearl; Gibler, Gertrude; Henderson, Alma Schmidt; Hicks, J. B. Substitute Trustee for Mildred C. Hicks; Hudgel, Maude B.; Huff, Ramona Orr; Jester, Henry L.; Kent, James; Kent, Sue; Koenig, Carroll; Kutzler, Lorraine; Olson, Emma Johanna; Parker, Alice; Parker, Nadine; Parker, Wallace G.; Raines, L. S.; Reitan, Carol Ann; Reitan, Robert E.; Rupp, Donald L.; Rupp, Lillian C.; Rupp, Roy R.; Ruth, Don E.; Ruth, Joyce M.; Ruth, Don E. & Joyce M., (Commercial); Sponder, Edna J.; Stevens, Lillie Mae; Sorenson, Roy T.; Stokely, Wilbur L.; Weaver, Dan K.

TRACT III—OMAHA MISSION BEND AREA

Blair, Emily S.; Ford, Donna C.; Goodman, Frances; Grosvenor, Ray L.; Iowa Public Service Company; Iowa State Conservation Commission; Jacobson, Hazel I.; Jacobson, Joan S.; Jacobson, Wm. S.; Marble, Minnie; McFarland, Coy W.; McFarland, Maude E.; McFarland, Ruby; Nelson, Fred E.; Nelson, Gladys E.; Nelson, Lloyd E.; Nelson, Carolyn Ann; Nelson, Larry L.; Olson, Ernest L.; Olson, Bernard M.; Olson, Larry M.; Olson, Leland M.; Queen, Harold; Ropes, John M.; Rush, Clyde H.; Swan, Glen; Swan, Grace; Swan, Ethel; Swan, P. C.; Taylor, Harry D.; Weber, Majayne Ropes.

COMPLAINT

To quiet title for immediate access permanent injunction order for quiet possession for damages.

(Filed October 6, 1975)

Comes now the OMAHA INDIAN TRIBE, acting pursuant to its Treaty with the UNITED STATES OF

AMERICA (10 Stat. 1043 et seq.), made and concluded in the City of Washington on the sixteenth day of March, one thousand eight hundred and fifty-four, the Constitution and laws of the United States, the Omaha Indian Tribe being a body corporate established pursuant to its Constitution and By-Laws formulated and adopted by the Omaha Indian Tribe, and approved by the Secretary of the Interior, principal agent of the United States, Trustee for the Omaha Indian Tribe, the Omaha Indian Tribe and its governing body, having been duly recognized by the Secretary of the Interior, all in accordance with Section 16 of the Act of June 18, 1934 (48 Stat. 987; 25 U. S. C. 476), and complains, alleges and avers that:

CLAIM NO. I

To quiet title in the Omaha Indian Tribe to 11,300 acres, more or less, of land in the Omaha Indian Reservation within the State of Iowa.

1. This Court has jurisdiction of this civil action brought by the Omaha Indian Tribe on its own behalf, pursuant to Section 1331 of Title 28 of the United States Codes, which confers jurisdiction upon this Court involving actions that arise " * * * under the Constitution, laws, or treaties" of the United States, "wherein the matter in controversy exceeds the sum or value of \$10,000" and pursuant to Section 1362 of Title 28 of the United States Codes which provides this Court " * * * shall have original jurisdiction of all civil actions, brought by any Indian tribe or band with a governing body duly recognized by the Secretary of the Interior, wherein the matter in controversy arises under the Constitution, laws, or treaties of the United States."

2. From time immemorial the Omaha Indian Tribe, plaintiff herein, occupied a vast area of land totaling 5,283,265 acres which was intersected by the Missouri River and located in part in the present States of Iowa and Nebraska. The Omahas, from time immemorial, had and still have their own communities, institutions, laws, and customs, exercising inherent powers of self-government. For over a century and a half the Omaha Indian Tribe has entered into Treaties with the United States. The final Treaty, in so far as here pertinent, between those two sovereigns was signed in the City of Washington, on March 16, 1854 (10 Stat. 1043), the "Treaty with the Omaha, 1854" hereafter referred to as the Treaty of 1854.

3. By the Treaty of 1854, the Omaha Indian Tribe reserved to itself—did not grant to the United States—the present Omaha Indian Reservation. That land thus reserved by the Omahas pursuant to their Treaty of 1854, was all situated in the soon thereafter created Territory of Nebraska. Several years subsequent to the Treaty of 1854 the State of Nebraska was admitted into the Union.

4. The middle of the main channel of the Missouri River was the common boundary established between the Omaha Indian Reservation and the State of Iowa, all as prescribed by the Treaty of 1854, the Act of Congress for the admission of Iowa into the Union and the Constitution of the State of Iowa. Similarly, the middle of the main channel of the Missouri River was declared to be the common boundary between the States of Iowa and Nebraska.

5. The State of Iowa (1 Iowa Code Anno. 85 et seq.) and the State of Nebraska (2A Revised Statutes of Ne-

braska, 728 et seq.) ratified the Iowa-Nebraska Compromise Boundary Compact, which was approved by the Congress and became effective by the Act of July 12, 1943, Ch. 220 (57 Stat. 494). By that Compromise Boundary Compact the middle of the main channel of the Missouri River was no longer the common boundary between the State of Iowa, the Omaha Indian Reservation and the State of Nebraska. That Compromise Boundary between the State of Iowa and the State of Nebraska, did not and could not affect the title to the lands of the Omaha Indian Tribe constituting its Reservation, which title to the lands involved is the subject matter of this Complaint.

6. The Omaha Indian Tribe, pursuant to its Treaty of 1854, the Constitution and laws of the United States, holds title to and is entitled to have full, peaceful and quiet possession of 11,300 acres, more or less, of land, being that part of the Omaha Indian Reservation, situated in Monona County, State of Iowa.

7. Those 11,300 acres of land, more or less, title to which is in the Omaha Indian Tribe and being that part of the Omaha Indian Reservation within the State of Iowa referred to in the paragraph of this Complaint which immediately precedes, are divided for the purposes of this litigation, into three separate tracts or parcels of land referred to throughout this Complaint as:

- a. Tract I, The Blackbird Bend Area,
comprised of 6,390 acres, more or less;
- b. Tract II, The Monona Bend Area,
comprised of 4,185 acres, more or less;
- c. Tract III, The Omaha Mission Bend Area,
comprised of 725 acres, more or less;
Totalling 11,300 acres, more or less.

8. Attached to this Complaint is a map, marked Exhibit A, entitled "Omaha Indian Reservation Boundary Determination", hereafter referred to as Exhibit A and by reference made a part of this Complaint, setting forth the Iowa-Nebraska Compromise Compact Boundary from the northern boundary of the Omaha Indian Reservation in the State of Iowa to the southern boundary of that Reservation in the State of Iowa.

9. There is likewise set forth on Exhibit A of this Complaint the eastern boundary of the Omaha Indian Reservation within the State of Iowa. Also set forth on Exhibit A of this Complaint are the eastern boundaries of the above referred to: Tract I, The Blackbird Bend Area; Tract II, The Monona Bend Area; and Tract III, The Omaha Mission Bend Area of the Omaha Indian Reservation within the State of Iowa, all as set forth in paragraph 6 of this Complaint.

10. Attached to this Complaint, marked Exhibit B, entitled "Legal Description of the Omaha Indian Reservation Within the State of Iowa," hereafter referred to as Exhibit B of this Complaint, is a precise and accurate legal description of the Omaha Indian Reservation Within the State of Iowa. Those lands, the title to which resides in the Omaha Indian Tribe, all as averred above, are sometimes referred to in this Complaint as the Omaha Indian Reservation within the State of Iowa.

11. In clear violation of the Treaty of 1854, the Constitution and laws of the United States, and of the rights, title and interests of the Omaha Indian Tribe in and to the lands depicted on Exhibit A and as fully and accurately described in Exhibit B of this Complaint, all as averred

above, the above named defendants and each of them, claim some right, title, interest or estate adverse to those rights, title, and interests of the Omaha Indian Tribe, in and to the lands of the Omaha Indian Reservation within the State of Iowa. Those adverse claims of the defendants and each of them, in and to the rights, title and interests of the Omaha Indian Tribe in and to the lands of the Omaha Indian Reservation within the State of Iowa, arise from illegal and willful trespasses upon and occupancy of those lands of the Omaha Indian Tribe and are invalid, illegal and, being totally without merit, are null and void and of no force and effect.

12. The Omaha Indian Tribe denies that the defendants or any of them have any valid right, title, interest or estate in or to any of the lands comprising the Omaha Indian Reservation within the State of Iowa, all of which are depicted on Exhibit A and described in Exhibit B of this Complaint, but rather the Omaha Indian Tribe affirmatively alleges those adverse claims of the defendants and each of them are illegal, invalid and totally without merit, all as averred above.

13. The Omaha Indian Tribe, by reason of the willful and illegal trespasses upon and occupancy of, and the illegal and invalid claimed rights, title, interests and estates in and to the lands comprising the Omaha Indian Reservation within the State of Iowa by the above named defendants and each of them, is now and has been for many years past, suffering irreparable damages and the Omaha Indian Tribe will, unless and until the relief and all of it prayed for in this Complaint is awarded to it, continue to suffer those irreparable damages.

14. The Omaha Indian Tribe is entitled to judgment by this Court entered against the defendants and each of them, adjudging, determining, declaring and quieting its title in and to the lands of the Omaha Indian Reservation within the State of Iowa, and denying each and every adverse claim of the defendants, and the Omaha Indian Tribe is entitled to a judgment and decree restoring it to full, peaceful and quiet possession of the full 11,300 acres, more or less, of the lands comprising that part of the Omaha Indian Reservation within the State of Iowa.

CLAIM NO. II

For Permanent Injunction, omitted in printing

CLAIM NO. III

For Immediate Possession and Payment of Damages,
omitted in printing

WHEREFORE, the Omaha Indian Tribe, Plaintiff herein, prays this Court for entry of a judgment in its favor:

* * *

4. Determining, declaring, adjudging and quieting the title of the Omaha Indian Tribe, Plaintiff herein, to the lands of the Omaha Indian Reservation within the State of Iowa, which lands are described with particularity in Exhibit B and clearly depicted and designated on Exhibit A of this Complaint; determining, declaring, and adjudging that Defendants have no right, title, interest or estate in or to the lands of the Omaha Indian Reservation within the State of Iowa, title to which resides in the Omaha Indian Tribe; forever restraining and enjoining the Defendants and each of them from claiming or assert-

ing any right, title, interest or estate in and to the lands of the Omaha Indian Reservation within the State of Iowa referred to above; said Plaintiff prays for the establishment of the Plaintiffs estate and that the Defendants and each of them be barred and forever estopped from having or claiming any right or title to these premises adverse to the Plaintiff; forever restraining and enjoining the Defendants and each of them from interfering in any way with the free and ready access, full use and occupancy by the Omaha Indian Tribe, its individual members of that Tribe, agents, employees, lessees and designees and the United States of America, Trustee for the Omaha Indian Tribe and its authorized agents, employees, and contractors.

* * *

(Paragraphs 1 through 3 and 5 through 8 omitted in printing).

OMAHA TRIBE OF NEBRASKA

BY: /s/ Edward L. Cline

Dated: October 6, 1975.

ATTORNEYS FOR TRIBE

O'BRIEN & O'BRIEN

BY: /s/ John T. O'Brien

916 Grandview Blvd.

Sioux City, Iowa 51101

(Verification omitted in printing).

(Exhibits B (land description), C-1 (Barrett Survey retracement description) and D (6/5/75 order, printed following complaint in C75-4026) omitted in printing).

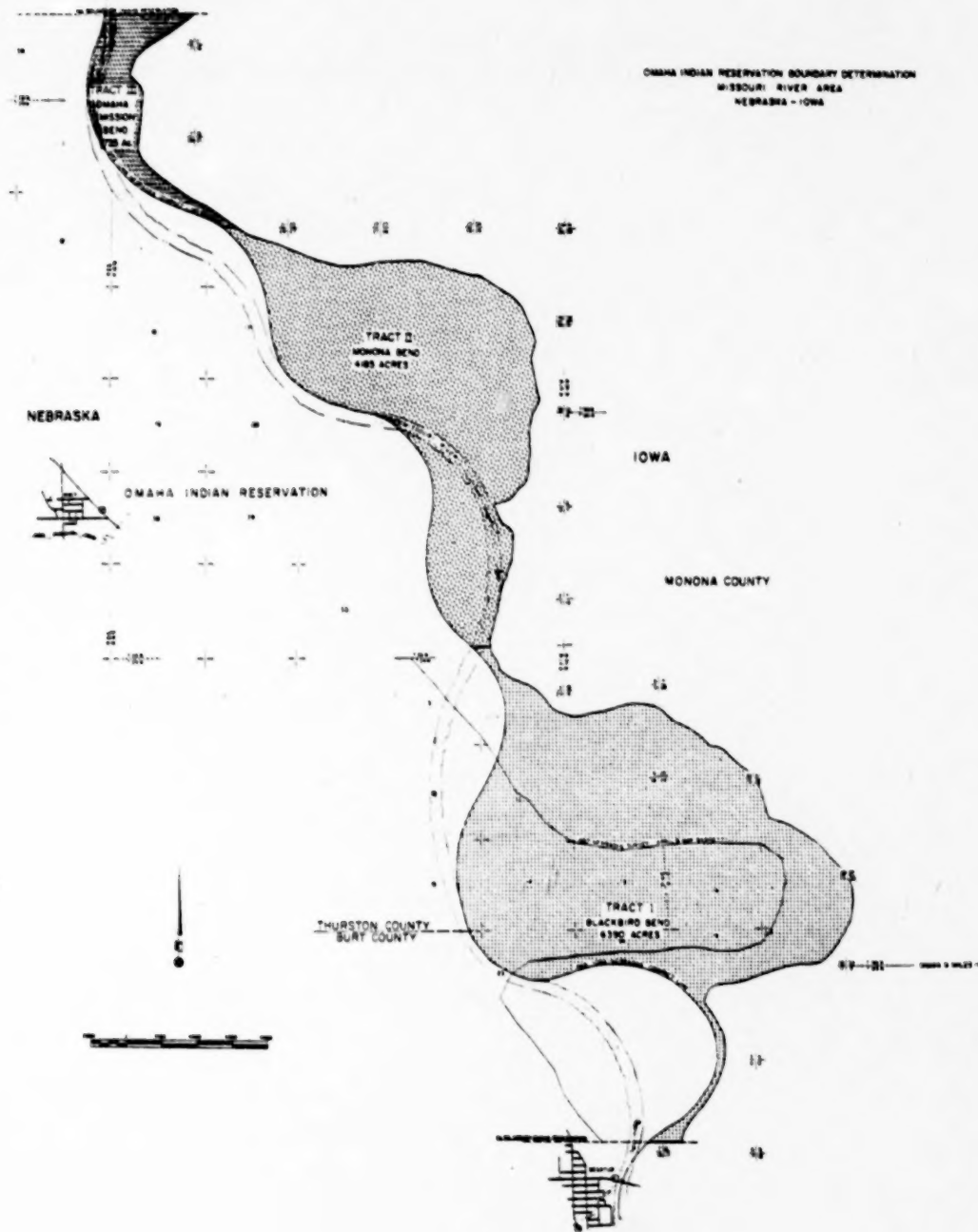


EXHIBIT A

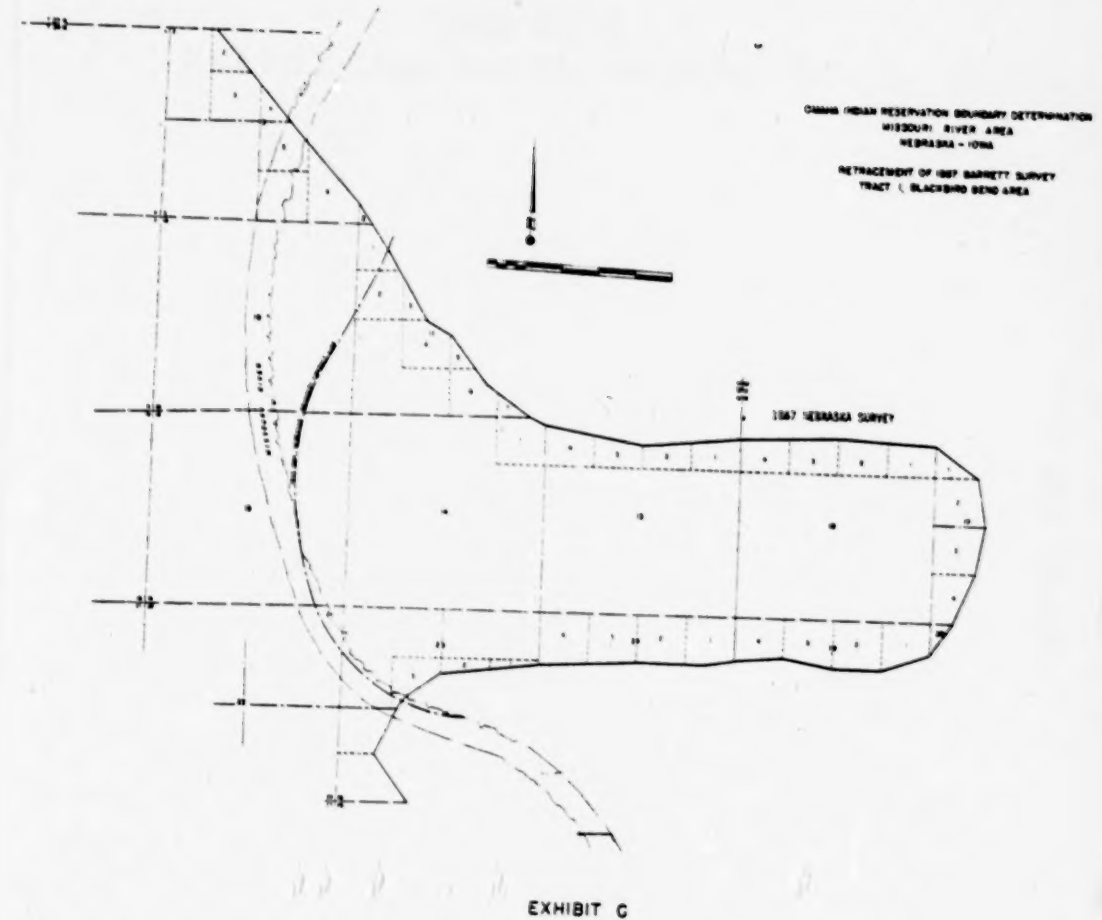


EXHIBIT C

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
WESTERN DIVISION

No. C 75-4067

OMAHA INDIAN TRIBE,
Plaintiff,

vs.

BLACKBIRD BEND AREA, et al.,
Defendants.

ANSWER OF DEFENDANTS STATE
OF IOWA AND STATE OF
IOWA CONSERVATION COMMISSION

DIVISION ONE

CLAIM NO. 1

For an answer to Claim No. 1 of the Complaint, Defendants State of Iowa and State of Iowa Conservation Commission admit, deny and allege as follows:

1. Defendants admit paragraph 1 of the Complaint.

2. Defendants admit that the Omaha Indian Tribe occupied an area of land in the present State of Nebraska, that it exercised and still exercises certain powers of self-government under the laws of the United States, and that it was party to certain agreements with the United States of America, including the agreement referred to in the Complaint as "the Treaty of 1854". Defendants further allege that they lack knowledge or information sufficient to form a belief as to the remaining allegations of paragraph 2 of the Complaint, and such allegations are therefore denied.

3. Defendants admit that the Treaty of 1854 purports to reserve to the Omaha Indian Tribe certain lands referred to therein, situated in the Territory of Nebraska, and the State of Nebraska was thereafter admitted to the Union. Defendants further allege that they lack knowledge or information sufficient to form a belief as to what if any land, referred to in the Treaty of 1854, was reserved to the Omaha Indian Tribe and was or is occupied by the present Omaha Indian Reservation.

4. Defendants admit that the middle of the main channel of the Missouri River for a period of time was the boundary between the states of Iowa and Nebraska.

5. Defendants admit that the boundary between the states of Iowa and Nebraska was fixed by the Iowa-Nebraska Boundary Compact so that the middle channel of the Missouri River was no longer the boundary between those states in some areas. Defendants deny the remaining allegations of paragraph 5 of the Complaint.

6. Defendants deny the allegations in paragraph 6 of the Complaint.

7. Defendants deny that title to the land referred to in paragraph 7 of the Complaint is in the Omaha Indian Tribe and that it is part of the Omaha Indian Reservation.

8. Defendants admit the Exhibit referred to in paragraph 8 of the Complaint purports to be a map setting forth the Iowa-Nebraska Compact boundary in the vicinity of the Omaha Indian Reservation. Defendants deny the remaining allegations contained in paragraph 8 of the Complaint.

9. Defendants deny the Exhibit referred to in para-

graph 9 of the Complaint sets forth the eastern boundary of the Omaha Indian Reservation in the State of Iowa.

10. Defendants deny the Exhibit referred to in paragraph 10 of the Complaint describes the Omaha Indian Reservation within the State of Iowa.

11. Defendants admit they claim right, title and interest in certain land referred to in paragraph 11 of the Complaint. Defendants deny the remaining allegations in paragraph 11 of the Complaint.

12. Defendants deny the allegations in paragraph 12 of the Complaint.

13. Defendants deny the allegations in paragraph 13 of the Complaint.

14. Defendants deny the allegations in paragraph 14 of the Complaint.

(Answer to Claim No. 2 omitted in printing).

(Answer to Claim No. 3 omitted in printing).

DIVISION II

Further answering, Defendants State of Iowa and State of Iowa Conservation Commission allege as follows:

35. Defendant State of Iowa is a sovereign state of the United States, admitted thereto in 1846 under 9 Stat. L. 117, and Defendant State of Iowa Conservation Commission is a lawful agency of the State of Iowa and a part of the government thereof.

36. Part of the land described in the Complaint is within the State of Iowa and owned by the State of Iowa as sovereign.

37. Defendants own the bed of the Missouri River between the thalweg and the ordinary high water mark and bank on the easterly side of the river, and islands growing up out of that portion of the riverbed and all abandoned channel of that portion of the river.

38. Part of said land is described in Exhibit A, attached hereto, and consists of an island and abandoned river channel lying on the easterly side of the thalweg of the Missouri River and on the easterly side of the compact line entered into between Iowa and Nebraska in 1942 and approved by Congress in 1943, 57 Stat. L. 495.

39. The State of Iowa owns and has the right and title to some of the land described in Exhibit A, attached hereto, by additional reason of quit claim deeds executed to the State of Iowa and filed and recorded in the office of the Monona County Recorder on May 25, 1965, Book 77 Land Deeds page 233, and May 25, 1965, Book 77 Land Deeds page 238, which deeds were executed in settlement of boundaries owned by the State of Iowa as sovereign.

40. Other land claimed by the Plaintiff consists of land belonging to the State of Iowa by virtue of action of the Missouri River, being land between the thalweg and the ordinary high water mark and bank on the easterly side of the river, islands growing up out of that portion of the river bed and abandoned channel of that portion of the river.

41. The western boundary of the State of Iowa was established by the United States Congress in 1943 and rights of the parties to this action were fixed thereby.

DIVISION III

42. Land which may at one time have been within the geographical area of the Omaha Indian Reservation or in the past occupied by the Omaha Indians, which is now owned by the State of Iowa, was eroded, washed away and ceased to exist by action of the Missouri River, and the rights of the Plaintiff to said land was extinguished thereby.

43. Plaintiff and its predecessors abandoned and relinquished their rights, title and possession, if any they had, to the land in question.

44. Plaintiff, its predecessors, agents and representatives did not assert any claim to the land in question until after witnesses having knowledge of the facts material herein died and evidence otherwise available was lost, so that Plaintiff's claim is barred by laches.

DIVISION IV

Counter-Claim

For a counter-claim against the plaintiff the defendants State of Iowa and State of Iowa Conservation Commission allege as follows:

45. This Court has jurisdiction over this counter-claim by reason of Rule 13(a) of the Federal Rules of Civil Procedure.

46. The defendants State of Iowa and State of Iowa Conservation Commission adopt by reference their answers in paragraphs 1 through 44, above, as if fully set forth.

47. An accurate legal description of the land owned by the State of Iowa within the area described in the com-

plaint as Tract I is annexed hereto and marked Exhibit "A".

48. Accurate legal descriptions of the land owned by the State of Iowa within the areas described in the complaint as Tract II and Tract III are annexed hereto and marked Exhibit "B" and Exhibit "C".

WHEREFORE, the defendants State of Iowa and State of Iowa Conservation Commission pray that judgment be entered quieting title to the land described in Exhibit "A", Exhibit "B" and Exhibit "C", annexed hereto, in the defendant State of Iowa in fee simple, declaring that plaintiff and its members have no right, title or interest in said described land, or any part thereof; enjoining the plaintiff and its members from asserting title to such lands and from interfering in any way with the possession, use and occupancy of said lands by the defendants State of Iowa Conservation Commission, dismissing plaintiff's complaint at plaintiff's costs, and granting such other and further relief as to the Court may seem just.

RICHARD C. TURNER

Attorney General of Iowa

CLIFFORD E. PETERSON

JAMES C. DAVIS

Assistant Attorneys General

/s/ Bennett Cullison, Jr.

P. O. Box 68

Harlan, Iowa 51537

Telephone: (712) 755-2192

Attorneys for Defendants

State of Iowa and State of

Iowa Conservation Commission

(Proof of service omitted in printing).

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
WESTERN DIVISION

NO. C 75-4067

OMAHA INDIAN TRIBE, etc.,

Plaintiff,

vs.

AGRICULTURAL & INDUSTRIAL INVESTMENT
COMPANY, et al.,

Defendants.

ANSWER OF DEFENDANTS ROY TIBBALS WILSON, HAROLD JACKSON, CHARLES E. LAKIN, AND FLORENCE LAKIN

For answer to Claim No. I of plaintiff's complaint the defendants, Roy Tibbals Wilson, Harold Jackson, Charles E. Lakin and Florence Lakin, admit, deny and allege as follows:

1. Admit that the Omaha Indian Tribe is organized under a constitution and by-laws duly ratified and approved as required by law, that said constitution and by-laws or charter authorizes and empowers said tribe to sue and to be sued; that this action involves the Omaha Indian Tribe; that the value of the lands involved exceeds \$10,000.00. These defendants deny the other allegations contained in paragraph 1 of plaintiff's complaint.

2. These defendants disclaim any interest in the lands referred to and described in plaintiff's complaint and exhibits A and B attached thereto, as Tract II, Monona Bend, and Tract III, Omaha Mission Bend, and allege that they are without knowledge or information suf-

ficient to form a belief as to the truth of the allegations with regard to said tracts in plaintiff's complaint.

3. Admit that the lands which constitute the Omaha Indian Reservation are held by the United States in trust for the Omaha Indian Tribe, but deny that the lands involved in this suit, the lands described in plaintiff's complaint as Tract I, Blackbird Bend, are a part of said reservation and deny that they are held in trust by the United States for the Omaha Indian Tribe.

4. These defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 2 and 3 of plaintiff's complaint.

5. Admit the allegations of paragraphs 4 and 5 of plaintiff's complaint.

6. Deny the allegations of paragraph 6 of plaintiff's complaint.

7. With respect to paragraphs 7, 8, 9 and 10 of plaintiff's complaint, these answering defendants admit that the exhibits A and B, attached to and made a part of plaintiff's complaint, contain a description of land there referred to as "Tract I, the Blackbird Bend Area," claimed in said complaint to be a part of the Omaha Indian Reservation, but these defendants deny each and every other allegation in said paragraphs 7, 8, 9 and 10 contained and specifically deny that either the plaintiff or the United States of America owns all or any part of the land contained in said Tract I, and deny that all or any of said land is a part of the Omaha Indian Reservation, and deny

that it is held in trust by the United States of America for the Omaha Indian Tribe.

8. With respect to paragraphs 11, 12, 13 and 14 of plaintiff's complaint, these defendants admit that in April and May of 1867, when the General Land Office survey was made by T. H. Barrett, surveyor, land which could be described as in Exhibits "C" and "C-1" attached to plaintiff's complaint (but of course without reference to the 1943 Iowa-Nebraska Compact line or to the east or left bank of the Missouri River) existed, not in Monona County, Iowa, but within the borders of the state of Nebraska on the right or Nebraska bank of the Missouri River. All of said land was eroded away by the action of the Missouri River between the years 1867 and 1943 and ceased to exist at the described location, having been washed down the river. New land was created between the years 1867 and 1943 by the process of accretion to the left or Iowa bank of the Missouri River, which accretions extended over all of the area of the earth's surface occupied in 1867 by the land described in said Exhibits "C" and "C-1" and over all of the rest of the area referred to in plaintiff's complaint as Tract I, Blackbird Bend, which in 1867 or at any time since then was occupied by any part of the channel of the Missouri River. Land was thereafter added by the process of accretion to the left or Iowa bank of the Missouri River west of said Compact Line and east of the present Missouri River channel. All of said accretion land upon its coming into existence became the property of the riparian owners on the Iowa Bank of the Missouri River to whose land it had accreted. By mesne conveyances from said riparian owners or from persons who obtained title from or against them, the defendants, Roy Tibbals Wilson and Charles E.

Lakin, became and are now the owners in fee simple of the portions of said accretion land which fall within the borders of tracts of land owned by them and appropriately described by Iowa section, township and range numbers as follows:

Roy Tibbals Wilson is the owner in fee simple of the following described land situated in Monona County, Iowa:

(Description omitted in printing.)

Roy Tibbals Wilson leased the above land to the defendant, Harold Jackson, under written lease dated August 15, 1974, for a term of one year from March 1, 1975, to February 28, 1976, and Harold Jackson is entitled to possession of said land under said lease.

Charles E. Lakin is the owner of the following described land which is situated in Monona County, Iowa:

(Description omitted in printing.)

Although the land described in said Exhibits "C" and "C-1" was in 1867 a part of the Omaha Indian Reservation to which the United States held title for the use and benefit of the Omaha Tribe of Indians, said title was extinguished when said land ceased to exist when it was eroded away and washed down the river. These answering defendants deny each and every allegation of paragraphs 11, 12, 13 and 14 of plaintiff's complaint not hereinabove admitted.

9. As an additional and separate defense these answering defendants allege that the defendants Roy Tibbals Wilson and Charles E. Lakin and their predecessors

in title have been in actual, open, notorious, exclusive, continuous and adverse possession of the lands described in paragraph 8 hereof under color of title for more than ten years (approximately forty years as alleged by plaintiff) prior to the assertion of any claim thereto by plaintiff, and the pertinent statute of limitations precludes plaintiff from effectively asserting any claim of title or interest in said property, and has extinguished any right, title or interest it might otherwise have had in said land.

10. As an additional and separate defense these answering defendants allege that prior to April 2, 1975, the plaintiff had not contested the ownership and possession of said land by said defendants and their predecessors in title but had acquiesced in the same; that relying on the foregoing acquiescence of the plaintiff the said defendants and their predecessors in title purchased said land from the apparent owners thereof, paid taxes on said land, and with respect to the land described in paragraph 8 hereof as owned by Wilson, cleared it of trees and otherwise prepared it for cultivation, installed irrigation equipment, dug drainage ditches, all involving great expense to these defendants and their predecessors in title. Also, witnesses who had knowledge of the action of the Missouri River in the vicinity of the land described in Exhibits "C" and "C-1" attached to plaintiff's complaint and in paragraph 8 of this answer, and of what effect such action had with respect to said land, have died and, due to the delay by the plaintiff in asserting its claim, said witnesses are unavailable to testify. By reason of the foregoing these defendants will be greatly prejudiced if the plaintiff is permitted to assert its claim effectively at this time, and the plaintiff by reason

of its laches is estopped from claiming or asserting any title it might otherwise have in said tracts described in paragraph 8 hereof or in any part thereof.

11. These defendants deny that the plaintiff is entitled to any judgment as claimed in plaintiff's complaint, and allege that the defendant, Charles E. Lakin, is entitled to a judgment quieting title in fee simple in him to the land described in paragraph 8 hereof as owned by him, and upholding his right to possession thereof as against the claims of the plaintiff and the Omaha Tribe of Indians; and that the defendant Roy Tibbals Wilson is entitled to a judgment quieting title in fee simple in him to the land described in paragraph 8 hereof as owned by him, and upholding his right to possession thereof as against the claims of the plaintiff, but subject to the rights of the defendant, Harold Jackson, under his lease above described. The defendants, Roy Tibbals Wilson and Charles E. Lakin are entitled to an order declaring that the Omaha Tribe of Indians has no right, title or interest in or to the lands described in paragraph 8 hereof, and no right to possession thereof.

(Answers to Claim Nos. II and III omitted in printing.)

WHEREFORE, these defendants pray that each and every prayer of plaintiff's complaint be denied, that plaintiff's complaint be dismissed, and that the Court award to these defendants their costs.

COUNTERCLAIM

For their counterclaim against the plaintiff these answering defendants allege as follows:

20. This Court has jurisdiction over this counterclaim by reason of Rule 24 (a) and Rule 13 (a) of the Federal Rules of Civil Procedure.

21. These defendants adopt and incorporate herein by this reference the allegations in their foregoing answer to plaintiff's complaint.

WHEREFORE, these defendants pray that judgment be entered as follows:

(a) Setting aside the order of this Court in cases C 75-4024 and C 75-4026, both now consolidated herewith, granting plaintiff's application for preliminary injunction; dissolving the preliminary injunction heretofore issued by this Court; and granting a preliminary injunction to these defendants herein enjoining and restraining the plaintiff, Omaha Indian Tribe, its individual members, agents, employees, and other persons acting under or by their direction, from interfering with the possession and use of the lands described in paragraph 8 hereof by these answering defendants until the rights of the parties to this action have been finally determined by this Court.

(b) For a judgment quieting title to the land described in paragraph 8 hereof in the defendants Roy Tibbals Wilson and Charles E. Lakin as their interests are there set forth, in fee simple; declaring that the plaintiff, the Omaha Tribe of Indians, and its members, have no right, title or interest in said described land or any part thereof; and enjoining the plaintiff, its agents, employees, members, and other persons acting under their direction, from asserting title to such lands and from interfering in any way with the possession, use and occupancy of

said land by defendants Roy Tibbals Wilson and Charles E. Lakin, and their lessees and assigns.

(c) For such other relief as the Court may find justified and for the costs of this action.

SWARR, MAY, SMITH & ANDERSEN
By /s/ Edson Smith

3535 Harney Street
Omaha, Nebraska 68131
(402) 341-5421

KENNEDY, HOLLAND, DELACY
& SVOBODA

By /s/ Thomas R. Burke

1900 First National Center
Omaha, Nebraska 68102
(402) 342-8200

JOHNSON, STUART, TINLEY,
PETERS & THORN

By /s/ Jack W. Peters

50-511 Park Building
Council Bluffs, Iowa 51501
(712) 322-4033

Attorneys for Defendants Roy Tibbals Wilson, Harold Jackson, Charles E. Lakin and Florence Lakin

(Proof of service omitted in printing.)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
WESTERN DIVISION

No. C 75-4067

OMAHA INDIAN TRIBE, ET AL.,

Plaintiff,

vs.

AGRICULTURAL AND INDUSTRIAL INVESTMENT
COMPANY, ET AL.,

Defendants.

ANSWER AND COUNTERCLAIM OF DEFENDANTS
RGP, Inc. and OTIS PETERSON

For answer to Claim No. 1 of Plaintiff's Complaint, the defendants, RGP, Inc. and Otis Peterson, admit, deny and allege as follows:

1. Admit that the Omaha Indian Tribe is organized under a constitution and by-laws duly ratified and approved as required by law, and that said constitution and by-laws or charter authorizes and empowers said tribe to sue and to be sued; that this action involves the Omaha Indian Tribe; that the value of the lands involved exceeds \$10,000.00. These defendants deny the other allegations contained in paragraph 1 of plaintiff's complaint.

2. These defendants disclaim any interest in the lands referred to and described in plaintiff's complaint and exhibits A and B attached hereto, as Tract II, Monona Bend, and Tract III, Omaha Mission Bend, and allege that they are without knowledge or information sufficient to form a belief as to the truth of the allegations with regard to said tracts in plaintiff's complaint.

3. Admit that the lands which constitute the Omaha Indian Reservation are held by the United States in trust for the Omaha Indian Tribe, but deny that the lands involved in this suit, the lands described in plaintiff's complaint as Tract I, Blackbird Bend, are a part of said reservation and deny that they are held in trust by the United States for the Omaha Indian Tribe.

4. These defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 2 and 3 of plaintiff's complaint.

5. Admit the allegations of paragraphs 4 and 5 of plaintiff's complaint.

6. Deny the allegations of paragraph 6 of plaintiff's complaint.

7. With respect to paragraphs 7, 8, 9 and 10 of plaintiff's complaint, these answering defendants admit that the exhibits A and B, attached to and made a part of plaintiff's complaint, contain a description of land there referred to as "Tract I, the Blackbird Bend Area," claimed in said complaint to be a part of the Omaha Indian Reservation, but these defendants deny each and every other allegation in said paragraphs 7, 8, 9 and 10 contained and specifically deny that either the plaintiff, or the United States of America owns all or any part of the land contained in said Tract I, and deny that all or any of said land is a part of the Omaha Indian Reservation, and deny that it is held in trust by the United States of America for the Omaha Indian Tribe.

8. With respect to paragraphs 11, 12, 13 and 14 of plaintiff's complaint, these defendants admit that in April

and May of 1867, when the General Land Office survey was made by T. H. Barrett, surveyor, land which could be described as in Exhibits "C" and "C-1" attached to plaintiff's complaint (but of course without reference to the 1943 Iowa-Nebraska Compact Line or to the east or left bank of the Missouri River) existed, not in Monona County, Iowa, but within the borders of the state of Nebraska on the right or Nebraska bank of the Missouri River. All of said land was eroded away by the action of the Missouri River between the years 1867 and 1943 and ceased to exist at the described location, having been washed down the river. New land was created between the years 1867 and 1943 by the process of accretion to the left or Iowa bank of the Missouri River which accretions extended over all of the area of the earth's surface occupied in 1867 by the land described in said Exhibits "C" and "C-1" and over all of the rest of the area referred to in plaintiff's complaint as Tract I, Blackbird Bend, which in 1867 or at any time since then was occupied by any part of the channel of the Missouri River. Land was thereafter added by the process of accretion to the left or Iowa bank of the Missouri River west of said Compact Line and east of the present Missouri River channel. All of said accretion land upon its coming into existence became the property of the riparian owners on the Iowa Bank of the Missouri River to whose land it had accreted. By mesne conveyances from said riparian owners or from persons who obtained title from or against them, defendant RGP, Inc. became and is now the owner in fee simple of the portion of said accretion land which falls within the borders of tracts of land owned by it and appropriately described by Iowa section, township and range numbers as follows:

RGP, Inc. is the owner in fee simple of the following land situated in Monona County, Iowa:

(Land description omitted in printing.)

RGP, Inc. leased the above land to the defendant, Otis Peterson, under written lease dated January 28, 1967 for a term of ten years from March 1, 1967 to March 1, 1977 and Otis Peterson is entitled to possession of said land under said lease.

Although the land described in said Exhibits "C" and "C-1" was in 1867 a part of the Omaha Indian Reservation to which the United States held title for the use and benefit of the Omaha Tribe of Indians, said title was extinguished when said land ceased to exist when it was eroded away and washed down the river. These answering defendants deny each and every allegation of Paragraphs 11, 12, 13 and 14 of plaintiff's complaint not hereinabove admitted.

9. As an additional and separate defense these answering defendants allege that the defendant, RGP, Inc. and its predecessors in title have been in actual, open, notorious, exclusive, continuous and adverse possession of the lands described in paragraph 8 hereof under color or title for more than ten years (approximately forty years as alleged by plaintiff) prior to the assertion of any claim thereto by plaintiff, and the pertinent statute of limitations precludes plaintiff from effectively asserting any claim of title or interest in said property, and has extinguished any right, title or interest it might otherwise have had in said land.

10. As an additional and separate defense these answering defendants allege that prior to April 2, 1975, the

plaintiff had not contested the ownership and possession of said land by said defendants and their predecessors in title but had acquiesced in the same; that relying on the foregoing acquiescence of the plaintiff, defendant RGP, Inc. and its predecessors in title purchased said land from the apparent owners thereof, paid taxes on said land, cleared it of trees and otherwise prepared it for cultivation, constructed dikes and dug drainage ditches, all involving great expense to the defendant and its predecessors in title. Also, witnesses who had knowledge of the action of the Missouri River in the vicinity of the land described in Exhibits "C" and "C-1" attached to plaintiff's complaint and in paragraph 8 of this answer, and of what effect such action had with respect to said land, have died and, due to the delay by the plaintiff in asserting its claim, said witnesses are unavailable to testify. By reason of the foregoing the defendants will be greatly prejudiced if the plaintiff is permitted to assert its claim effectively at this time, and the plaintiff by reason of its laches is estopped from claiming or asserting any title it might otherwise have in said tracts described in paragraph 8 hereof or in any part thereof.

11. These defendants deny that the plaintiff is entitled to any judgment as claimed in plaintiff's complaint, and allege that the defendant, RGP, Inc. is entitled to a judgment quieting title in fee simple in it to the land described in paragraph 8 thereof as owned by it, and upholding its right to possession thereof as against the claims of the plaintiff and the Omaha Tribe of Indians but subject to the rights of the defendant, Otis Peterson, under his lease above described. The defendant, RGP, Inc. is entitled to an order declaring that the Omaha

Tribe of Indians has no right, title or interest in or to the lands described in paragraph 8 hereof, and no right to possession thereof.

(Answers to Claim Nos. II and III omitted in printing.)

WHEREFORE, these defendants pray that each and every prayer of plaintiff's complaint be denied, that plaintiff's complaint be dismissed, and that the Court award to these defendants their costs.

COUNTERCLAIM

For their counterclaim against the plaintiff these answering defendants allege as follows:

20. This Court has jurisdiction over this counterclaim by reason of Rule 24 (a) and Rule 13 (a) of the Federal Rules of Civil Procedure.

21. These defendants adopt and incorporate herein by this reference the allegations in their foregoing answer to plaintiff's complaint.

WHEREFORE, these defendants pray that judgment be entered as follows:

(a) Setting aside the order of this Court in cases, C 75-4024 and C 75-4026, both now consolidated herewith, granting plaintiff's application for preliminary injunction; dissolving the preliminary injunction heretofore issued by this Court; and granting a preliminary injunction to these defendants herein enjoining and restraining the plaintiff, Omaha Indian Tribe, its individual members, agents, employees, and other persons acting under or by their direction, from interfering with the possession and use of the

lands described in paragraph 8 hereof by these answering defendants until the rights of the parties to this action have been finally determined by this Court.

(b) For a judgment quieting title to the land described in paragraph 8 hereof in the defendant, RGP, Inc. in fee simple; declaring that the plaintiff, the Omaha Tribe of Indians, and its members, have no right, title or interest in said described land or any part thereof; and enjoining the plaintiff, its agents, employees, members and other persons acting under their direction, from asserting title to such lands and from interfering in any way with the possession, use and occupancy of said land by defendant, RGP, Inc. and their lessees and assigns.

(c) For such other relief as the Court may find justified and for the costs of this action.

PETERS, CAMPBELL &
PEARSON, P.C.

By /s/ Peter J. Peters
233 Pearl Street
Council Bluffs, Iowa 51501

*Attorneys for Defendants RGP, INC.
and Otis Peterson*

(Proof of service omitted in printing.)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
WESTERN DIVISION

NO. C 75-4067

OMAHA INDIAN TRIBE,

Plaintiff,

vs.

HAROLD SORENSON, HAROLD M. SORENSON,
LUEA SORENSON AND DARRELL L.
SORENSON, et al.,

Defendants.

ANSWER AND COUNTERCLAIM

(Filed February 12, 1976)

COME NOW the defendants, Harold Sorenson, Harold M. Sorenson, Luea Sorenson and Darrell L. Sorenson and in this their answer to plaintiff's complaint, respectfully states to the Court:

CLAIM NO. I

1. Defendants deny paragraph 1.
2. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 2, 3 and 4, and therefore deny the same.
3. Defendants admit the first sentence of paragraph 5 but deny the remainder of the paragraph.
4. Defendants deny paragraph 6.
5. Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraphs 7, 8, 9 and 10, and therefore deny the same.
6. Defendants deny paragraphs 11, 12, 13 and 14.

WHEREFORE, these defendants pray that plaintiff's first claim be dismissed as to these defendants at plaintiff's costs.

(ANSWER TO CLAIM NO. II AND CLAIM NO. III
omitted in printing.)

AFFIRMATIVE DEFENSES

1. Plaintiff has failed to state a cause of action upon which relief can be granted.
2. This court lacks jurisdiction of the subject matter.
3. Plaintiff should be denied relief because its claims are barred by the statute of limitations.
4. Plaintiff should be denied relief because it has acquiesced in the possession and ownership of these defendants in the land which is claimed adversely to these defendants.
5. Plaintiff should be denied relief because it is guilty of laches.
6. Plaintiff should be denied relief because its claims are barred by the doctrine of estoppel.
7. Plaintiff should be denied relief because it has abandoned its claims set out in its complaint.
8. Plaintiff should be denied relief because plaintiff has so long delayed its claim to this land and has not come into the court with clean hands.
9. Plaintiff should be denied relief for the reason that granting the same would deprive these defendants of their property without due process of law, and deny these defendants of equal protection of the laws.

WHEREFORE, these defendants pray that plaintiff's complaint be dismissed in its entirety at plaintiff's costs.

(COUNTERCLAIM I omitted in printing)

COUNTERCLAIM II

COMES NOW the defendant, Harold M. Sorenson, counterclaimant, and states to the court:

1. That at all times material hereto he was and is the owner of certain real estate more particularly described in Exhibit "Sorenson A" attached hereto and by this reference made a part hereof.
2. That this counterclaimant denies that the plaintiff, or any of the defendants named herein, have any valid right, title, interest or estate in or to any of the above described lands and alleges that any adverse claim of the plaintiff or any of the defendants is illegal, invalid, void and without merit.
3. That your counterclaimant, Harold Sorenson, is entitled to judgment by this court against the plaintiff and against all other defendants, and each of them, declaring, determining, and quieting title in and to the lands above described in this counterclaimant, Harold Sorenson, and denying each and every adverse claim of the plaintiff and all other defendants, and is entitled to judgment and decree continuing and restoring to him full, peaceful and quiet possession of said lands.

WHEREFORE, your counterclaimant, Harold M. Sorenson, prays this court for entry of a judgment in his favor determining, declaring, and quieting title in him to the lands described in this counterclaim, and forever restraining and enjoining the petitioner and all other defendants herein and each of them from claiming or asserting any right, title, interest or estate in and to said lands, and further for the costs of this action.

COUNTERCLAIM III

COME NOW the defendants, Harold Sorenson and Luea Sorenson, husband and wife, counterclaimants, and state to the court:

1. That at all times material hereto they were and are the owners of certain real estate more particularly described in exhibit "Sorenson B" attached hereto and by this reference made a part hereof.

2. That these counterclaimants deny that the plaintiff, or any of the defendants named herein, have any valid right, title, interest or estate in or to any of the above described lands and allege that any adverse claim of the plaintiff or any of the defendants is illegal, invalid, void and without merit.

3. That these counterclaimants, Harold Sorenson and Luea Sorenson, husband and wife, are entitled to judgment by this court against the plaintiff and against all other defendants, and each of them, declaring, determining and quieting title in and to the lands above described in these counterclaimants, Harold Sorenson and Luea Sorenson, husband and wife, and denying each and every adverse claim of plaintiff and all other defendants, and are entitled to judgment and decree continuing and restoring to them full, peaceful and quiet possession of said land.

WHEREFORE, your counterclaimants, Harold Sorenson and Luea Sorenson, husband and wife, pray this court for entry of a judgment in their favor determining, declaring and quieting title in them to the land described in this counterclaim, and forever restraining the plaintiff and all other defendants herein, and each of them, from claiming

or asserting any right, title, interest or estate in and to said land, and further for the costs of this action.

COUNTERCLAIM IV

COMES NOW the defendant, Darrell L. Sorenson, counterclaimant, and states to the court:

1. That at all times material hereto he was and is the owner of certain real estate more particularly described in exhibit "Sorenson C" attached hereto and by this reference made a part hereof.

2. That this counterclaimant denies that the plaintiff, or any of the defendants named herein, have any valid right, title, interest or estate in or to any of the above described lands and alleges that any adverse claim of the plaintiff or any of the defendants are illegal, invalid, void and without merit.

3. That your counterclaimant, Darrell L. Sorenson, is entitled to judgment by this court against the plaintiff and against all other defendants, and each of them, declaring, determining, and quieting title in and to the lands above described in this counterclaimant, Darrell L. Sorenson, and denying each and every adverse claim of the plaintiff and all other defendants, and is entitled to judgment and decree continuing and restoring to him full, peaceful and quiet possession of said lands.

WHEREFORE, your counterclaimant, Darrell L. Sorenson, prays this court for entry of a judgment in his favor determining, declaring and quieting title in him to the lands described in this counterclaim, and forever restraining and enjoining the petitioner and all other defendants herein and each of them from claiming or asserting any right,

title, interest or estate in and to said lands, and further for the costs of this action.

/s/ Maurice B. Nieland

300 Toy National Bank Building
Sioux City, Iowa 51101

*Attorney for Defendants Harold
Sorenson, Harold M. Sorenson, Luea
Sorenson and Darrell L. Sorenson*

(Certificate of service and Exhibits A, B and C
omitted in printing.)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
WESTERN DIVISION

NO. C 75-4067

OMAHA TRIBE OF NEBRASKA,

Plaintiff,

vs.

AGRICULTURAL & INDUSTRIAL INVESTMENT
COMPANY, et al.,

Defendants.

REPLY TO COUNTERCLAIM OF ROY TIBBALS
WILSON, HAROLD JACKSON, CHARLES E.
LAKIN, AND FLORENCE LAKIN,

(Filed March 9, 1976)

COMES NOW, the Omaha Tribe of Nebraska, and in
reply to Counterclaim of Roy Tribbals Wilson, Harold
Jackson, Charles E. Lakin, and Florence Lakin, respect-
fully states to the Court as follows:

1. The Omaha Indian Tribe in answer to Paragraph
20 denies each and every allegation contained in the afore-
said Paragraph 20.

2. The Omaha Indian Tribe denies each and every
allegation contained in Paragraph 21.

WHEREFORE, the Omaha Indian Tribe prays Judg-
ment against the above-named Defendants and Counter-
claimants, Roy Tribbals Wilson, Harold Jackson, Charles
E. Lakin and Florence Lakin, all in accordance with the
Complaint filed herein by the Omaha Indian Tribe on or
about October 6, 1975.

O'BRIEN, GALVIN & O'BRIEN

By: /s/ John T. O'Brien

916 Grandview Blvd.
Sioux City, Iowa

Attorneys for Tribe.

(Certificate of service omitted in printing.)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
WESTERN DIVISION

NO. C 75-4067

OMAHA INDIAN TRIBE,

Plaintiff,

vs.

HAROLD SORENSON, HAROLD M. SORENSON.
LUEA SORENSON AND DARRELL L.
SORENSON, et al.,

Defendants.

REPLY TO ANSWER AND COUNTERCLAIM OF
DEFENDANTS HAROLD SORENSON, HAROLD
M. SORENSON, LUEA SORENSON, AND
DARRELL L. SORENSON

COMES NOW, the Omaha Indian Tribe, Plaintiff herein, and in reply to the Affirmative Defenses in the Answer filed by Harold Sorenson, Harold M. Sorenson, Luea Sorenson, and Darrell Sorenson, in this cause respectfully states as follows:

1. The Plaintiff denies the allegations contained in Paragraph 1 of the Affirmative Defenses.
2. The Plaintiff denies the allegations contained in Paragraph 2 of the Affirmative Defenses.
3. The Plaintiff denies the allegations contained in Paragraph 3 of the Affirmative Defenses.
4. The Plaintiff denies the allegations contained in Paragraph 4 of the Affirmative Defenses.
5. The Plaintiff denies the allegations contained in Paragraph 5 of the Affirmative Defenses.
6. The Plaintiff denies the allegations contained in Paragraph 6 of the Affirmative Defenses.
7. The Plaintiff denies the allegations contained in Paragraph 7 of the Affirmative Defenses.
8. The Plaintiff denies the allegations contained in Paragraph 8 of the Affirmative Defenses.
9. The Plaintiff denies the allegations contained in Paragraph 9 of the Affirmative Defenses.

WHEREFORE, this Plaintiff renews the prayer of its Complaint.

REPLY TO COUNTERCLAIM I

COMES NOW, the Omaha Indian Tribe, Plaintiff herein, and replies to the Counterclaim filed by Defendants Harold Sorenson, et al and avers and alleges and denies as follows:

REPLY TO COUNTERCLAIM I

1. The Omaha Indian Tribe moves to dismiss the alleged Counterclaim I on the grounds that the \$2,000 prayed for in said Counterclaim has been paid to the Attorney for the Counterclaimant and receipt has been acknowledged.

WHEREFORE, the Omaha Indian Tribe renews the prayer of its Complaint as against the Defendants herein and further prays that they be denied any relief on this Counterclaim.

REPLY TO COUNTERCLAIM II

In reply to Counterclaim II, the Omaha Indian Tribe, Plaintiff herein, incorporates by reference the Complaint filed herein by the Omaha Indian Tribe on October 6, 1975.

1. The Omaha Indian Tribe, Plaintiff herein, denies Paragraph 1 of Counterclaim II.
2. The Omaha Indian Tribe, Plaintiff herein, denies the allegations contained in Paragraph 2 of Counterclaim II.
3. The Omaha Indian Tribe, Plaintiff herein, denies the allegations contained in Paragraph 3 of Counterclaim II.

WHEREFORE, the Omaha Indian Tribe renews the prayer of its Complaint as against the Defendants herein

and further prays that they be denied any relief on this Counterclaim.

REPLY TO COUNTERCLAIM III

In reply to Counterclaim III, the Omaha Indian Tribe, Plaintiff herein, incorporates by reference the Complaint filed herein by the Omaha Indian Tribe on October 6, 1975.

1. The Omaha Indian Tribe, Plaintiff herein, denies the allegations contained in Paragraph 1 of Counterclaim III.

2. The Omaha Indian Tribe, Plaintiff herein, denies the allegations contained in Paragraph 2 of Counterclaim III.

3. The Omaha Indian Tribe, Plaintiff herein, denies the allegations contained in Paragraph 3 of Counterclaim III.

WHEREFORE, the Omaha Indian Tribe renews the prayer of its Complaint as against the Defendants herein and further prays that they be denied any relief.

REPLY TO COUNTERCLAIM IV

In reply to Counterclaim No. IV, the Omaha Indian Tribe, Plaintiff herein, incorporates by reference the Complaint filed herein by the Omaha Indian Tribe on October 6, 1975.

1. The Plaintiff denies the allegations contained in Paragraph 1 of Counterclaim IV.

2. The Plaintiff denies the allegations contained in Paragraph 2 of Counterclaim IV.

3. The Plaintiff denies the allegations contained in Paragraph 3 of Counterclaim IV.

WHEREFORE, the Omaha Indian Tribe renews the prayer of its Complaint as against the Defendants herein and further prays that they be denied any relief on this Counterclaim.

O'BRIEN, GALVIN & O'BRIEN

By: /s/ John T. O'Brien

916 Grandview Blvd.

Sioux City, Iowa 51101

Attorney for Tribe.

(Certificate of service omitted in printing.)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
WESTERN DIVISION

NO. C 75-4024

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ROY TIBBALS WILSON, et al.,

Defendants.

NO. C 75-4026

OMAHA INDIAN TRIBE, etc.,

Plaintiff,

vs.

HAROLD JACKSON, et al.,

Defendants.

NO. C 75-4067
 OMAHA INDIAN TRIBE, et al.,
Plaintiffs,
 vs.

AGRICULTURAL & INDUSTRIAL INVESTMENT
 COMPANY, et al.,
Defendants.

REPLY TO COUNTERCLAIM OF DEFENDANTS
 R. G. P., INC., AND OTIS PETERSON

(Filed August 12, 1976)

COMES NOW, the Omaha Indian Tribe, Plaintiff herein, and replies to the Counterclaim filed by R.G.P., INC. and OTIS PETERSON, Defendants, as follows:

1. The Defendants OTIS PETERSON and R.G.P., INC. filed their Answer and Counterclaim subsequent to this Court's Order dated April 5, 1976, wherein this Court, among other things, under the heading of "Motion for Partial Summary Judgment" Pages 5-6 made this Ruling, " * * * State statutes of limitation cannot affect adverse possession of lands held in Trust by the United States for the benefit of Indian Tribes. Similarly, State Rules of Laches, Estoppel, or Abandonment, have no applicability to the title disputes in the instant action."

2. Irrespective of this Court's Ruling on April 5, 1976, denying the availability of the affirmative defenses of Statutes of Limitations, Estoppel, Laches and related defenses as against the Omaha Indian Tribe, the Defendants OTIS PETERSON and R.G.P., INC., in Paragraph 10 and Paragraph 11 of their Answer and Counterclaim interpose those defenses and adhere to the concepts throughout their answering Counterclaim that in some

manner their claim to the Omaha Tribe, Plaintiff herein, could be denied on the basis of Statute of Limitations, Estoppel and related defenses.

3. By way of "Counterclaim" the Defendants OTIS PETERSON and R.G.P., INC. by reference have incorporated all of the allegations in their Answer as a basis upon which their Counterclaim is predicated without indicating the concept upon which those Motions for Counterclaim are predicated, and they pray for an Injunction against the Omaha Indian Tribe to prevent them from interfering with the alleged possession of the Defendants, OTIS PETERSON and R.G.P., INC and request the Court to declare that fee simple title reside in those Defendants.

4. The Omaha Indian Tribe, Plaintiff denies each and every allegation contained in the Answer and Counterclaim filed by the aforesaid Defendants, OTIS PETERSON and R.G.P., INC.

O'BRIEN, GALVIN & O'BRIEN
 By: /s/ John T. O'Brien

922 Douglas Street
 Sioux City, Iowa 51101

*Attorneys for Omaha Tribe
 of Nebraska.*

(Certificate of service omitted in printing.)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
WESTERN DIVISION

No. C 75-4024

UNITED STATES OF AMERICA,
Plaintiff,
vs.

ROY TIBBALS WILSON, et al.,
Defendants.

No. C 75-4026

OMAHA INDIAN TRIBE, etc.,
Plaintiff,
vs.

HAROLD JACKSON, et al.,
Defendants.

No. C 75-4067

OMAHA INDIAN TRIBE, etc.,
Plaintiff,
vs.

AGRICULTURAL & INDUSTRIAL INVESTMENT
COMPANY, et al.,
Defendants.

ORDER

(Filed April 5, 1976)

This matter is before the court on the following
motions: -

(Listing and discussion of a number of categories of
motions omitted in printing.)

MOTIONS TO DISMISS

Numerous defendants in No. C 75-4067 move to dismiss on the ground that no claim is stated because it appears upon the face of the complaint that all claims alleged are barred by the pertinent Iowa statute of limitations, § 614.1 (5), Code of Iowa (1975). It is the court's view that the motion is not well taken.

Even assuming Iowa law to be applicable on this issue, the Iowa high court has consistently held that the doctrine of adverse possession as governed by the statute does not effect a change of title against governmental bodies so as to prevent the exercise of their governmental functions. *E. g., Twining v. City of Burlington*, 68 Iowa 284, 27 N. W. 243 (1886); *Johnson v. City of Shenandoah*, 153 Iowa 493, 133 N. W. 761 (1911); *Sioux City v. Betz*, 232 Iowa 84, 4 N. W. 2d 872 (1942). Here the United States is a named party in one action and has a governmental interest in protecting the title of all lands held in trust for an Indian tribe pursuant to treaty. *See Heckman v. United States*, 224 U. S. 413, 437-438, 32 S. Ct. 424, 56 L. Ed. 820 (1912).

Furthermore, plenary control over tribal rights to Indian lands became the exclusive province of Federal law upon adoption of the Constitution. *Oneida Indian Nation v. County of Oneida*, 414 U. S. 661, 667, 94 S. Ct. 772, 39 L. Ed. 2d 73 (1974). The primacy of Federal law has been asserted through the Non-intercourse Act of 1790, 1 Stat. 137, and its successors, now codified at 25 USC § 177.

The latter statute provides *inter alia*:

No purchase, grant, lease, or other conveyance of lands, or of any title or claim thereto, from any

Indian nation or tribe of Indians, shall be of any validity in law or equity, unless the same be made by treaty or convention entered into pursuant to the Constitution.

If title to tribal lands is not alienable by the Indians, *a fortiori* title cannot be obtained against them by adverse possession. *United States v. Schwartz*, 460 F.2d 1365, 1371-1372 (7th Cir. 1972); *United States v. 7,405.3 Acres of Land*, 97 F.2d 417, 422-423 (4th Cir. 1938).

Initially, the court finds that the interests of judicial convenience and economy are not being served by consolidation of these three cases *in toto*. The posture of No. C 75-4067 is hindering an orderly and efficient administration of justice in the other two cases, wherein the parties, issues and boundaries of the controverted lands are more clearly in focus. Therefore, trial of all issues relating to lands in No. C 75-4067 which are not also within the subject res of Nos. C 75-4024 and C 75-4026, and all issues of damages, will be severed. Cases Nos. C 75-4024 and C 75-4026 will remain consolidated with each other and with the portion of No. C 75-4067 relating to the identical subject res.

Ruling on the motion to strike jury trial demand will be reserved with respect to the severed portion of No. C 75-4067. The other two cases, and the quiet title issues in No. C 75-4067 relating to the identical lands in the Blackbird Bend region, are equitable in nature. The Tribe has possession of these lands.² An action to quiet title

² In its ruling on the motion for preliminary injunction, the court resolved the issue of the status quo by ruling that the Indians were then in possession under a claim of title.

and obtain injunctive relief by a party in possession is equitable, for which a jury trial is not required. *Humble Oil & Refining Co. v. Sun Oil Co.*, 191 F.2d 705, 718 (5th Cir. 1951), *cert. denied*, 342 U.S. 920, 72 S.Ct. 367, 96 L.Ed. 687; *United States v. Mulligan*, 177 F.Supp. 384, 386 (D. Ore. 1959); *cf. Zunamon v. Brown*, 418 F.2d 883, 887-889 (8th Cir. 1969). Plaintiffs' motions to strike jury trial demand will be granted with respect to these consolidated cases.

Motion for Partial Summary Judgment

Plaintiff Tribe moves for summary judgment on several issues raised by way of affirmative defenses in the answers of certain defendants. Summary judgment is appropriate only where no genuine issues of material fact remain unresolved and the movant is clearly entitled to judgment as a matter of law. Rule 56, FRCP; *Sartor v. Arkansas Natural Gas Corp.*, 321 U.S. 620, 627, 64 S.Ct. 724, 88 L.Ed. 967 (1944); *Chicago & Northwestern Ry. Co. v. Hospers Packing Co., Inc.*, 363 F.Supp. 697 (N.D. Ia. 1973). Here defendants have failed to file any resistance generating factual issues as required by Rule 56(e), FRCP, and it appears that the issues remaining on these defenses are largely questions of law.

The court has previously indicated that it has subject matter jurisdiction over these actions, 28 USC §§ 1331, 1345, 1362, and plaintiffs' motion is granted on this issue. It is also the court's view that the complaints do state a cause of action, and the motion will also be granted on this issue.

With respect to those issues listed in subparagraphs c-h, summary judgment is appropriate as a matter of law

only with respect to the establishment of title aspects and not on the damages issues. As stated above, state statutes of limitations cannot effect adverse possession of lands held in trust by the United States for the benefit of Indian tribes. Similarly, state rules of laches, estoppel, or abandonment have no applicability to the title dispute in the instant action. *United States v. Schwarz, supra* at 1372. Summary judgment will be granted to the extent indicated above, and denied in all remaining respects.

April 5, 1976.

/s/ Edward J. McManus, Chief Judge
United States District Court

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

September Term, 1977

Nos. 77-1384 and 77-1387

OMAHA INDIAN TRIBE etc.
and UNITED STATES OF AMERICA,

Appellants,

vs.

ROY TIBBALS WILSON, et al.,

Appellees.

Appeals from the United States District Court for the
Northern District of Iowa

The Court having considered petition for rehearing en banc filed by counsel for appellees and, being fully advised in the premises, it is ordered that the petition for rehearing en banc be, and it is hereby, denied.

Considering the petition for rehearing en banc as a petition for rehearing, it is ordered that the petition for rehearing also be, and it is hereby, denied.

May 2, 1978.

SUPREME COURT OF THE UNITED STATES

No. 78-160

Roy Tibbals Wilson, et al.,

Petitioners,

vs.

Omaha Indian Tribe, et al.

ORDER ALLOWING CERTIORARI. Filed November
13, 1978.

The petition herein for a writ of certiorari to the United States Court of Appeals for the Eighth Circuit is granted, limited to questions 2 and 3 presented by the petition. The case is consolidated with No. 78-161 and a total of one hour is allotted for oral argument.

SUPREME COURT OF THE UNITED STATES

No. 78-161

Iowa, et al.,

Petitioners,

vs.

Omaha Indian Tribe, et al.

ORDER ALLOWING CERTIORARI. Filed November 13, 1978.

The petition herein for a writ of certiorari to the United States Court of Appeals for the Eighth Circuit is granted, limited to questions 1 and 4 presented by the petition. The case is consolidated with No. 78-160 and a total of one hour allotted for oral argument.

An Act to regulate trade and intercourse with the Indian tribes, and to preserve peace on the frontiers. Approved June 30, 1834.

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That all that part of the United States west of the Mississippi, and not within the states of Missouri and Louisiana, or the territory of Arkansas, and, also, that part of the United States east of the Mississippi river, and not within any state to which the Indian title has not been extinguished, for the purposes of this act, be taken and deemed to be the Indian country.

SEC. 2. *And be it further enacted,* That no person shall be permitted to trade with any of the Indians (in the Indian country) without a license therefor from a superintendent of Indian affairs, or Indian agent, or sub-agent, which license shall be issued for a term not exceeding two years for the tribes east of the Mississippi, and not exceeding three years for the tribes west of that river. And the person applying for such license shall give bond in a penal sum not exceeding five thousand dollars, with

one or more sureties, to be approved by the person issuing the same, conditioned that such person will faithfully observe all the laws and regulations made for the government of trade and intercourse with the Indian tribes, and in no respect violate the same. And the superintendent of the district shall have power to revoke and cancel the same, whenever the person licensed shall, in his opinion, have transgressed any of the laws or regulations provided for the government of trade and intercourse with the Indian tribes, or that it would be improper to permit him to remain in the Indian country. And no trade with the said tribes shall be carried on within their boundary, except at certain suitable and convenient places, to be designated from time to time by the superintendents, agents, and sub-agents, and to be inserted in the license. And it shall be the duty of the persons granting or revoking such licenses, forthwith to report the same to the commissioner of Indian affairs, for his approval or disapproval.

SEC. 3. *And be it further enacted,* That any superintendent or agent may refuse an application for a license to trade, if he is satisfied that the applicant is a person of bad character, or that it would be improper to permit him to reside in the Indian country, or if a license, previously granted to such applicant, has been revoked, or a forfeiture of his bond decreed. But an appeal may be had from the agent or the superintendent, to the commissioner of Indian affairs; and the President of the United States shall be authorized, whenever in his opinion the public interest may require the same, to prohibit the introduction of goods, or of any particular article, into the country belonging to any Indian tribe, and to direct all licenses to trade with such tribe to be revoked, and all ap-

plications therefor to be rejected; and no trader to any other tribe shall, so long as such prohibition may continue, trade with any Indians of or for the tribe against which such prohibition is issued.

SEC. 4. *And be it further enacted*, That any person other than an Indian who shall attempt to reside in the Indian country as a trader, or to introduce goods, or to trade therein without such license, shall forfeit all merchandise offered for sale to the Indians, or found in his possession, and shall moreover forfeit and pay the sum of five hundred dollars.

SEC. 5. *And be it further enacted*, That no license to trade with the Indians shall be granted to any persons except citizens of the United States: *Provided*, That the President shall be authorized to allow the employment of foreign boatmen and interpreters, under such regulations as he may prescribe.

SEC. 6. *And be it further enacted*, That if a foreigner shall go into the Indian country without a passport from the War Department, the superintendent, agent, or sub-agent of Indian affairs, or from the officer of the United States commanding the nearest military post on the frontiers, or shall remain intentionally therein after the expiration of such passport, he shall forfeit and pay the sum of one thousand dollars; and such passport shall express the object of such person, the time he is allowed to remain, and the route he is to travel.

SEC. 7. *And be it further enacted*, That if any person other than an Indian shall, within the Indian country, purchase or receive of any Indian, in the way of barter, trade, or pledge, a gun, trap, or other article commonly used in

hunting, any instrument of husbandry or cooking utensils of the kind commonly obtained by the Indians in their intercourse with the white people, or any other article of clothing, except skins or furs, he shall forfeit and pay the sum of fifty dollars.

SEC. 8. *And be it further enacted*, That if any person, other than an Indian, shall, within the limits of any tribe with whom the United States shall have existing treaties, hunt, or trap, or take and destroy, any peltries or game, except for subsistence in the Indian country, such person shall forfeit the sum of five hundred dollars, and forfeit all the traps, guns, and ammunition in his possession, used or procured to be used for that purpose, and peltries so taken.

SEC. 9. *And be it further enacted*, That if any person shall drive, or otherwise convey any stock of horses, mules, or cattle, to range and feed on any land belonging to any Indian or Indian tribe, without the consent of such tribe, such person shall forfeit the sum of one dollar for each animal of such stock.

SEC. 10. *And be it further enacted*, That the superintendent of Indian affairs, and Indian agents and sub-agents, shall have authority to remove from the Indian country all persons found therein contrary to law; and the President of the United States is authorized to direct the military force to be employed in such removal.

SEC. 11. *And be it further enacted*, That if any person shall make a settlement on any lands belonging, secured, or granted by treaty with the United States to any Indian tribe, or shall survey or shall attempt to survey such lands, or designate any of the boundaries by mark-

ing trees, or otherwise, such offender shall forfeit and pay the sum of one thousand dollars. And it shall, moreover, be lawful for the President of the United States to take such measures, and to employ such military force, as he may judge necessary to remove from the lands as aforesaid any such person as aforesaid.

SEC. 12. *And be it further enacted*, That no purchase, grant, lease, or other conveyance of lands, or of any title or claim thereto, from any Indian nation or tribe of Indians, shall be of any validity in law or equity, unless the same be made by treaty or convention entered into pursuant to the constitution. And if any person, not employed under the authority of the United States, shall attempt to negotiate such treaty or convention, directly or indirectly, to treat with any such nation or tribe of Indians, for the title or purchase of any lands by them held or claimed, such person shall forfeit and pay one thousand dollars: *Provided, nevertheless*, That it shall be lawful for the agent or agents of any state who may be present at any treaty held with Indians under the authority of the United States, in the presence and with the approbation of the commissioner or commissioners of the United States appointed to hold the same, to propose to, and adjust with the Indians, the compensation to be made for their claim to lands within such state, which shall be extinguished by treaty.

SEC. 13. *And be it further enacted*, That if any citizen or other person residing within the United States or the territory thereof, shall send any talk, speech, message, or letter to any Indian nation, tribe, chief, or individual, with an intent to produce a contravention or infraction

of any treaty or other law of the United States, or to disturb the peace and tranquility of the United States, he shall forfeit and pay the sum of two thousand dollars.

SEC. 14. *And be it further enacted*, That if any citizen, or other person, shall carry or deliver any such talk, message, speech, or letter, to or from any Indian nation, tribe, chief, or individual, from or to any person or persons whatsoever, residing within the United States, or from or to any subject, citizen, or agent of any foreign power or state, knowing the contents thereof, he shall forfeit and pay the sum of one thousand dollars.

SEC. 15. *And be it further enacted*, That if any citizen or other person, residing or living among the Indians, or elsewhere within the territory of the United States, shall carry on a correspondence, by letter or otherwise, with any foreign nation or power, with an intent to induce such foreign nation or power to excite any Indian nation, tribe, chief, or individual, to war against the United States, or to the violation of any existing treaty; or in case any citizen or other person shall alienate, or attempt to alienate, the confidence of any Indian or Indians from the government of the United States, he shall forfeit the sum of one thousand dollars.

SEC. 16. *And be it further enacted*, That where, in the commission, by a white person, of any crime, offence, or misdemeanor, within the Indian country, the property of any friendly Indian is taken, injured or destroyed, and a conviction is had for such crime, offence, or misdemeanor, the person so convicted shall be sentenced to pay to such friendly Indian to whom the property may belong, or whose person may be injured,

a sum equal to twice the just value of the property so taken, injured, or destroyed. And if such offender shall be unable to pay a sum at least equal to the just value or amount, whatever such payment shall fall short of the same shall be paid out of the treasury of the United States: *Provided*, That no such Indian shall be entitled to any payment, out of the treasury of the United States, for any such property, if he, or any of the nation to which he belongs, shall have sought private revenge, or attempted to obtain satisfaction by any force or violence: *And provided, also*, That if such offender cannot be apprehended and brought to trial, the amount of such property shall be paid out of the treasury, as aforesaid.

SEC. 17. *And be it further enacted*, That if any Indian or Indians, belonging to any tribe in amity with the United States, shall, within the Indian country, take or destroy the property of any person lawfully within such country, or shall pass from the Indian country into any state or territory inhabited by citizens of the United States, and there take, steal, or destroy, any horse, horses, or other property, belonging to any citizen or inhabitant of the United States, such citizen or inhabitant, his representative, attorney, or agent, may make application to the proper superintendent, agent, or sub-agent, who, upon being furnished with the necessary documents and proofs, shall, under the direction of the President, make application to the nation or tribe to which said Indian or Indians shall belong, for satisfaction; and if such nation or tribe shall neglect or refuse to make satisfaction, in a reasonable time, not exceeding twelve months, it shall be the duty of such superintendent, agent, or sub-agent, to make return of his doings to the commissioner of Indian

affairs, that such further steps may be taken as shall be proper, in the opinion of the President, to obtain satisfaction for the injury; and, in the meantime, in respect to the property so taken, stolen or destroyed, the United States guaranty, to the party so injured, an eventual indemnification: *Provided*, That, if such injured party, his representative, attorney, or agent, shall, in any way, violate any of the provisions of this act, by seeking or attempting to obtain private satisfaction or revenge, he shall forfeit all claim upon the United States for such indemnification: *And provided, also*, That, unless such claim shall be presented within three years after the commission of the injury, the same shall be barred. And if the nation or tribe to which such Indian may belong, receive an annuity from the United States, such claim shall, at the next payment of the annuity, be deducted therefrom, and paid to the party injured; and, if no annuity is payable to such nation or tribe, then the amount of the claim shall be paid from the treasury of the United States: *Provided*, That nothing herein contained shall prevent the legal apprehension and punishment of any Indians having so offended.

SEC. 18. *And be it further enacted*, That the superintendents, agents, and sub-agents, within their respective districts, be, and are hereby, authorized and empowered to take depositions of witnesses touching any depredations, within the purview of the two preceding sections of this act, and to administer an oath to the deponents.

SEC. 19. *And be it further enacted*, That it shall be the duty of the superintendents, agents, and sub-agents, to endeavor to procure the arrest and trial of all Indians

accused of committing any crime, offence, or misdemeanor, and all other persons who may have committed crimes or offences within any state or territory, and have fled into the Indian country, either by demanding the same of the chiefs of the proper tribe, or by such other means as the President may authorize; and the President may direct the military force of the United States to be employed in the apprehension of such Indians, and also, in preventing or terminating hostilities between any of the Indian tribes.

SEC. 20. *And be it further enacted*, That if any person shall sell, exchange, or give, barter, or dispose of, any spirituous liquor or wine to an Indian, (in the Indian country,) such person shall forfeit and pay the sum of five hundred dollars; and if any person shall introduce, or attempt to introduce, any spirituous liquor or wine into the Indian country, except such supplies as shall be necessary for the officers of the United States and troops of the service, under the direction of the War Department, such person shall forfeit and pay a sum not exceeding three hundred dollars; and if any superintendent of Indian affairs, Indian agent, or sub-agent, or commanding officer of a military post, has reason to suspect, or is informed, that any white person or Indian is about to introduce, or has introduced, any spirituous liquor or wine into the Indian country, in violation of the provisions of this section, it shall be lawful for such superintendent, Indian agent, or sub-agent, or military officer, agreeably to such regulations as may be established by the President of the United States, to cause the boats, stores, packages, and places of deposit of such person to be searched, and if any such spirituous liquor or wine is found, the

goods, boats, packages, and peltries of such persons shall be seized and delivered to the proper officer, and shall be proceeded against by libel in the proper court, and forfeited, one-half to the use of the informer, and the other half to the use of the United States; and if such person is a trader, his license shall be revoked and his bond put in suit. And it shall moreover be lawful for any person, in the service of the United States, or for any Indian, to take and destroy any ardent spirits or wine found in the Indian country, excepting military supplies as mentioned in this section.

SEC. 21. *And be it further enacted*, That if any person whatever shall, within the limits of the Indian country, set up or continue any distillery for manufacturing ardent spirits, he shall forfeit and pay a penalty of one thousand dollars; and it shall be the duty of the superintendent of Indian affairs, Indian agent, or sub-agent, within the limits of whose agency the same shall be set up or continued, forthwith to destroy and break up the same; and it shall be lawful to employ the military force of the United States in executing that duty.

SEC. 22. *And be it further enacted*, That in all trials about the right of property in which an Indian may be a party on one side, and a white person on the other, the burden of proof shall rest upon the white person, whenever the Indian shall make out a presumption of title in himself from the fact of previous possession or ownership.

SEC. 23. *And be it further enacted*, That it shall be lawful for the military force of the United States to be employed in such manner and under such regulations as the President may direct, in the apprehension of every

person who shall or may be found in the Indian country, in violation of any of the provisions of this act, and him immediately to convey from said Indian country, in the nearest convenient and safe route, to the civil authority of the territory or judicial district in which said person shall be found, to be proceeded against in due course of law; and also, in the examination and seizure of stores, packages, and boats, authorized by the twentieth section of this act, and in preventing the introduction of persons and property into the Indian country contrary to law; which persons and property shall be proceeded against according to law: *Provided*, That no person apprehended by military force as aforesaid, shall be detained longer than five days after the arrest and before removal. And all officers and soldiers who may have any such person or persons in custody shall treat them with all the humanity which the circumstances will possibly permit; and every officer or soldier who shall be guilty of maltreating any such person while in custody, shall suffer such punishment as a court-martial shall direct.

SEC. 24. *And be it further enacted*, That for the sole purpose of carrying this act into effect, all that part of the Indian country west of the Mississippi river, that is bounded north by the north line of lands assigned to the Osage tribe of Indians, produced east to the state of Missouri; west, by the Mexican possessions; south, by Red river; and east, by the west line of the territory of Arkansas and the state of Missouri, shall be, and hereby is, annexed to the territory of Arkansas; and that for the purpose aforesaid, the residue of the Indian country west of the said Mississippi river shall be, and hereby is, annexed to the judicial district of Missouri; and for the pur-

pose aforesaid, the several portions of Indian country east of the said Mississippi river, shall be, and are hereby, severally annexed to the territory in which they are situate.

SEC. 25. *And be it further enacted*, That so much of the laws of the United States as provides for the punishment of crimes committed within any place within the sole and exclusive jurisdiction of the United States, shall be in force in the Indian country: *Provided*, The same shall not extend to crimes committed by one Indian against the person or property of another Indian.

SEC. 26. *And be it further enacted*, That if any person who shall be charged with a violation of any of the provisions or regulations of this act, shall be found within any of the United States, or either of the territories, such offenders may be there apprehended, and transported to the territory or judicial district having jurisdiction of the same.

SEC. 27. *And be it further enacted*, That all penalties which shall accrue under this act, shall be sued for and recovered in an action of debt, in the name of the United States, before any court having jurisdiction of the same, (if any state or territory in which the defendant shall be arrested or found,) the one half to the use of the informer, and the other half to the use of the United States, except when the prosecution shall be first instituted on behalf of the United States, in which case the whole shall be to their use.

SEC. 28. *And be it further enacted*, That when goods or other property shall be seized for any violation of this act, it shall be lawful for the person prosecuting on behalf

of the United States to proceed against such goods, or other property, in the manner directed to be observed in the case of goods, wares, or merchandise brought into the United States in violation of the revenue laws.

SEC. 29. *And be it further enacted*, That the following acts and parts of acts shall be, and the same are hereby, repealed, namely: An act to make provision relative to rations for Indians, and to their visits to the seat of government, approved May thirteen, eighteen hundred; an act to regulate trade and intercourse with the Indian tribes, and to preserve peace on the frontiers, approved March thirty, eighteen hundred and two; an act supplementary to the act passed thirtieth March, eighteen hundred and two, to regulate trade and intercourse with the Indian tribes, and to preserve peace on the frontiers, approved April twenty-nine, eighteen hundred and sixteen; an act for the punishment of crimes and offences committed within the Indian boundaries, approved March three, eighteen hundred and seventeen; the first and second sections of the act directing the manner of appointing Indian agents, and continuing the "Act establishing trading-houses with the Indian tribes," approved April sixteen, eighteen hundred and eighteen; an act fixing the compensation of Indian agents and factors, approved April twenty, eighteen hundred and eighteen; an act supplementary to the act entitled "An act to provide for the prompt settlement of public accounts," approved February twenty-four, eighteen hundred and nineteen; the eighth section of the act making appropriations to carry into effect treaties concluded with several Indian tribes therein mentioned, approved March three, eighteen hundred and nineteen; the second section of the act to continue in force

for a further time the act entitled "An act for establishing trading-houses with the Indian tribes, and for other purposes," (a) approved March three, eighteen hundred and nineteen; an act to amend an act entitled "An act to regulate trade and intercourse with the Indian tribes, and to preserve peace on the frontiers," approved thirtieth of March, eighteen hundred and two, approved May six, eighteen hundred and twenty-two; an act providing for the appointment of an agent for the Osage Indians west of the state of Missouri and territory of Arkansas, and for other purposes, approved May eighteen, eighteen hundred and twenty-four; the third, fourth, and fifth sections of "An act to enable the President to hold treaties with certain Indian tribes, and for other purposes," approved May twenty-five, eighteen hundred and twenty-four; the second section of the "Act to aid certain Indians of the Creek nation in their removal to the west of the Mississippi," approved May twenty, eighteen hundred and twenty-six; and an act to authorize the appointment of a sub-agent to the Winnebago Indians on Rock river, approved February twenty-five, eighteen hundred and thirty-one: *Provided, however*, That such repeal shall not effect [affect] any rights acquired, or punishments, penalties, or forfeitures incurred, under either of the acts or parts of acts, nor impair or affect the intercourse act of eighteen hundred and two, so far as the same relates to or concerns Indian tribes residing east of the Mississippi: *And provided also*, That such repeal shall not be construed to revive any acts or parts of acts repealed by either of the acts or sections herein described.

SEC. 30. *And be it further enacted*, That until a western territory shall be established, the two agents for

the Western territory, as provided in the act for the organization of the Indian department, this day approved by the President, shall execute the duties of agents for such tribes as may be directed by the President of the United States. And it shall be competent for the President to assign to one of the said agents, in addition to his proper duties, the duties of superintendent for such district of country or for such tribes as the President may think fit. And the powers of the superintendent at St. Louis, over such district or tribes as may be assigned to such acting superintendent, shall cease: *Provided*, That no additional compensation shall be allowed for such services.

APPROVED, June 30, 1834.

(R. 145) ELMER M. CLARK,

a witness called on behalf of the Plaintiff Omaha Tribe, being first duly sworn, was examined and testified on his (R. 146) oath as follows:

Direct Examination

By Mr. Veeder:

Q. Mr. Clark, would you state your full name into the record?

A. Elmer M. Clark.

Q. And where do you reside, Mr. Clark?

A. Denver, Colorado.

Q. When were you born, Mr. Clark?

A. August 31, 1917.

Q. And what is your present profession and occupation?

A. I am a land and aerial surveyor.

Q. How long have you been engaged in that activity, Mr. Clark?

A. Since service in the Marine Corps in 1944, sir.

* * *

A. I am licensed in seven states as a professional land surveyor; the states being: Utah, Arizona, New Mexico, Colorado, Wyoming, Montana and Iowa.

* * *

(R. 277) Q. What investigation did you make in the ground, from the standpoint of both 98 and 98-A, to correlate those two exhibits with the cadastral survey as prepared by Anderson, and which plats are in the record? Would you go on the ground and relate those with the cadastral survey, please?

A. Yes. I have walked portions of this high bank along the—cut through Sections 28 and 34, and particularly on down into Section 33, Township 84 North, Range 46 West, and have examined, not only the high bank, but the remains of the channels or abandoned channels that are still there today.

* * *

(R. 291) Q. Please refer to the exhibit when you are speaking, Mr. Clark.

A. On Exhibit 98. The area instead of being a large backwater then shows very plainly two channels

and possibly a third, which would be outside or easterly and northeasterly of the main river of the Missouri River.

These channels are the result of at least one and possibly two or more avulsions as the river made a point bar cut-off—I believe that is the correct term—from the 1875 channel to the present 1879 channel.

Now, in addition to this, this drawing cross-section for Station A-4800—48—which is a cross-section on the 1879 Missouri River map showing the river soundings running across this area—

. . .

(R. 695) By Mr. Cullison:

Q. Now, is there anything on this map that identifies anything as being center of old channel?

A. Yes. These soundings taken across on Station A-48 go in a southeasterly direction, and that shows a depth of twenty feet for the main thalweg or the main navigation channel for the 1879 river. If you continue in a southeasterly direction these depths go down—reduce to as little as one foot, which is shown here. Then the soundings become deeper and deeper, and in the part, against the Iowa bank in section, the north part (R. 696) of Section 4 is another channel which is twenty feet deep. Then you go back up, then these soundings continue back up to the bank.

Q. There's nothing on this map, exhibit whatever it is, 29, that says that that is an old channel; is there?

A. It is not labeled, but it is an obvious old channel.

Q. But it is your opinion that is an old channel; is that right?

A. It certainly is, because it is as deep as the main channel.

Q. And this designation here is your opinion, old channel?

A. Yes. Based on thorough study of the area and many years experience.

. . .

(R. 717) Q. Could you tell us how you were able to draw in the remaining blue areas and obtain those shapes and forms that you did on 98 and 98-A?

A. Starting on the Iowa bank, high bank, which would be the left bank of the Missouri River, going through Sections 28, 33 and 34, the Missouri River Commission map does outline that exterior high bank to the east.

That high bank is related or can be identified and the 1879 map follows the contours of the present-day high bank.

The second feature coming back inward, which cuts across, starting in Section 17, Township 24 North, Range 11 East, and running southeasterly is also marked on the 1879 map. The left or most easterly limb of that line is marked.

. . .

(R. 718) Q. Is that all you used?

A. Yes. I related to the present-day topography and the older records, which show those two channels specifically.

Q. Well, I understand that you could identify the edge of the bank as it is shown in 1879 and the edge of a bar that is shown in 1879, but how do you get from that to this water formation which you show in the right portion of Exhibits 98 and 98-A?

A. Because the 1870—correction—1890 map identified or the map—those two channels in that matter—in the manner and those channels are still in existence today.

. . .

(R. 3123) Q. And based upon your personal observation and based upon your long years of experience as a cadastral engineer, is it possible for you to state the criterion or the criteria that you utilized in determining the abandoned bed of a stream as it relates to the surrounding terrain and soils and related substances in which the (R. 3124) abandoned bed is found?

A. Yes, I can.

. . .

The Court: He said there was no testimony. I am overruling the objection.

You may make your answer.

The Witness: I have located and defined the boundaries of properties and abandoned river channels before

by observing, locating, measuring the width and size or dimension of these abandoned channels and observing the water levels and elevations.

By Mr. Veeder:

Q. What has your investigation revealed in regard—do you (R. 3125) have the exhibit there?

Mr. Peters: I do.

By Mr. Veeder:

Q. What has your investigation revealed in regard to the northerly high bank in the area, as you have set it forth, as it relates to the toe of that northerly high bank?

A. The Corps of Engineers' maps for 1927 and '28, which is Tribe Exhibits 36 and 27, show a series of lakes and marshes adjacent to and at the base or at the foot of the present Iowa northern high bank.

Q. Now, what did that investigation reveal in connection with the kind and type of deposition that you found in the bed of that stream?

A. I have walked the area with Dr. Robinson and observed the change in soil types from point bar deposits to the channel fill-type of deposits and have measured on the maps and the aerial photographs the width of the stream along the high bank.

Q. What did those determinations reveal, based upon your personal investigations and research?

A. They showed the Missouri River—the main channel of the Missouri River—was against that high bank at one time.

. . .

(R. 3128) The Court: Now, you can answer the question.

A. I was on the ground and observed the surface soils and I reviewed Dr. Robinson's material or the reports of his samples and could identify the difference between the channel fill and point bar deposits.

Q. Based upon your investigations and determinations as a cadastral surveyor, the man who placed these locations previously, were you able to make a determination as to the kind and type of soils that were against the bank?

A. Yes.

Q. What did you find them to be—

A. In the area—

Q. —the toe of the Bank?

A. —along adjacent to the toe of the bank was in the marsh areas—labelled marsh and lakes—are channel fill deposits, typical.

. . .

(R. 3129) Q. What did you find there?

A. I found the channel fill deposits, which would be a very fine soil, bordering on being a clay almost.

Q. Now, have you an opinion, based upon investigations that you made, as to the kind and type of soils that you encountered, the fact of the present location of the northerly high bank as it relates to the 1912 bank, as depicted on Wilson Q-8, and Wilson L-4—if my memory serves me correctly—have you an opinion as to the

phenomenon or forces that were involved when the Missouri River departed from that bank?

A. Yes.

Q. Is it your opinion that the Missouri River departed on the—left that bank on the basis of accreting to it or by sudden and abrupt change, all based upon your investigations?

. . .

(R. 3130) By Mr. Veeder:

Q. State in your opinion as to—based upon all your investigation—as to when the Missouri River departed from the northerly high bank, as you have described it?

. . .

The Court: Overruled.

The Witness: Subsequent to 1912, the main channel of the Missouri River abruptly, suddenly left its channel; that is, along the base what is now known as the northerly Iowa or Iowa northerly high bank.

By Mr. Veeder:

Q. Based upon your investigations and the statements that preceded that; that is, your review and investigations and on-the-ground personal investigations, do you have an opinion as to whether the Missouri River left that high bank by accretions?

Mr. Peters: That's objected to as leading and suggestive; no proper and sufficient foundation.

The Court: Overruled.

The Witness: It did not leave by accretion.

. . .

(R. 783) CHARLES S. ROBINSON,

a witness called on behalf of the Plaintiff, Omaha Tribe, being first duly sworn, was examined and testified on his oath as follows:

Direct Examination

By Mr. Veeder:

Q. Will you state into the record, Dr. Robinson, your full name and address?

A. Charles S. Robinson, 5265 McIntyre, Golden, Colorado.

Q. How old are you, Dr. Robinson?

A. Fifty-six.

Q. Would you state into the record your present employment or by whom you are employed?

A. I am a consulting geologist specializing in engineering and mining geology and geo-hydrology, geological engineer and I am self-employed, sole proprietorship.

Q. Were you in the Court Room when Elmer Clark testified?

Yes.

. . .

(R. 925) Q. Based upon your knowledge of river morphology, would you explain that phenomena, the extended meander lobe and the constriction near the center of it?

A. The river has continued — the river did continue to erode its eastern and high bank as it had started — as we have records starting in 1852. The main stream of the river had continued to extend itself eastward.

The river could not move southward because of the erosion resistant bank along the south limb of it and the force of the river has been—well, it's been directed farther and farther east. It's getting so that the river has to go around tighter and tighter bends as the bend extends itself to the east and the river then as a result in part, started to erode along or about in the position of the previous—the high water channel, which had been shown on the 1856 Warren map and also as shown on the Exhibit 95, the 1867 Barrett Survey and the Macomb map.

The river began to take—to erode into this bank (R. 926) and to become or move closer to the southern limb of the meander lobe.

Q. Is that the classic course or metamorphosis of an oxbow or meander lobe of this character, Dr. Robinson?

A. Yes.

Q. Does that report to what is demonstrated at least to some degree on 87 and 88, which are the—that you explained in detail, the river morphology, is that right?

A. That's correct. We are having the northern limb of the river move away from the—its bank, but the south limb can't move.

And it's from a study of river morphology we can predict that something is about to happen. The river is out of balance with its environment and it's because of this resisted layer at the south that does not allow the classic of the wood where we have homogeneous materials throughout the river to move south.

. . .

(R. 927) Q. Now, Dr. Robinson, would you please turn to the Exhibit 96-A, which is a photograph, the aerial photograph of the extended meander lobe of the Blackbird Bend lobe.

Relate the physical phenomena as set forth on that aerial to the geologic depiction and description that you have just completed.

A. Exhibit 96-A, which is entitled "Tract 1, Blackbird Bend Area, 1875 Missouri River, High Water Mark," and the significant features shown in 1968, the outlines of the 1875 river, the Barrett line, and the Anderson Survey line are shown on the aerial photograph, 96-A, which is a photograph of the present-day topography.

The 1875 river fits into or is shown against the present-day high bank which is visible on the ground today in Iowa.

The 1875 river was confined or eroding at the time against this high eastern bank and that bank as shown on the ground today is a sculpture as a result of the 1875 river and its erosion.

. . .

(R. 929) *Further Direct Examination*

By Mr. Veeder:

Q. I am going to ask you, Dr. Robinson, to take each of these aerals, step to 96-A, and follow the perimeter of what we call the easterly high bank, utilizing those obliques, please.

A. Exhibit 96-B-4 is an oblique aerial photograph taken from a position approximately in the middle, or in

the (R. 930) south half of Section 33, Township 84 North, Range 46 West, and looking in a generally northeast—east by northeast direction. The photograph shows, you can identify the position of the photograph by the county road which makes the sharp bend very close to the common corner between Sections 23 and 27, 34 and 33 in Township 84 North, Range 46 West. Visible in the center foreground of the aerial photograph is the high bank, which is in existence today, the area along the line running obliquely along the southeast quarter of Section 23. And below that bank you can see a dark stretch or dark area which is the visual evidence of the old 1875 channel.

Q. Now, does that comport with what is disclosed on the aerial 96-A?

A. Yes, sir.

Q. Would you step up there and relate it also—Now, don't relate the photo; follow through the area that Mr. Peters was interrogating you about as to the old bed of the '67 river, would you, from the standpoint of continuity?

A. The '67 river lay north in this area, or lay north of the 1875.

Q. And further down and around, would you?

A. And came down through and around the outside of the (R. 931) Barrett meander survey.

. . .

(R. 978) A. Based chiefly upon the geologic mapping of the area. The 1875 high bank is a physical feature which is on the ground today.

The position of the channel occupied by the 1875 river can be identified today on the ground. The width of that river at the time of the abandonment—

Q. You are speaking of the '75 river?

(R. 979) A. 1875 river, yes. It can be determined by differences in materials, surficial materials on the surface of the earth on the ground today.

Q. Have you done that?

A. Yes, sir.

Q. On the ground?

A. Yes.

Q. And personally observed it?

A. Yes.

Q. And can you state in the record as your observation disclosed referring to the kind and type of deposits that are at the foot of that high bank, the width of the 1875 river?

A. The width of the 1875 river has—can be seen on ground today by the difference in deposits as approximately 800 feet.

Q. Now, predicated upon your soil analysis, both surficial and drilling, what were the distinguishing elements between the soils in the now abandoned channel and the right bank of that channel? What are the differences?

A. The material in the abandoned channel is principally clay, with a little sand and silt.

And if I may state, Tribe's Exhibit 91—

Q. Lift that up, would you?

A. —which is a sample labelled as channel fill was taken (R. 980) from the 1875 abandoned channel. It's organic rich clay material with a little sand and silt.

On the right bank of the 1875 river, which would be west of the river, the deposits are principally point bar deposits.

. . .

(R. 1002) Q. Would you move back so the Court can observe? Would you go around on the other side?

A. If I may repeat, extending from the northwest quarter of Section 28, Township 84 north, Range 46 west, diagonally across Section 28 across the northeastern most corner of Section 33, along the western boundary of Section 34, diagonally across the southeast corner of Section 33, all of Township 84 north, Range 46 west and, then, westward across the top of Section—northern end of Section 5 in Township 83 north, 46 west. That high bank which circumscribes the 1875 river is present and visible today.

Q. Would you state the phenomenon, the natural monuments and the physical phenomenon within that arch concerning which you just testified?

A. Below the high bank following the same arch are clay deposits which represent the water, but with clay deposits below that represent the position of the 1875 river channel. These clay deposits—clay soil can be identified on the surface ground today and can be fol-

lowed continuously except where man has altered it with artificial fill, completely around that arch to the position approximately at the northwest corner of Section 5, Township 84 north, Range 46 west.

• • •

(R. 3181) By Mr. Veeder:

Q. Now, from the standpoint of the open end of the 1875 river, what does that mean to you as a mapmaker, and he stipulated to your being an expert on that? Go ahead and state what that means.

A. They didn't know what happened to the west of that open end, the surveyors who prepared Exhibit 79.

Q. They did not observe it; did they?

A. They did not observe it.

Q. Would you also state, based upon the unmapped areas of Sections 29 and 30, whether it is possible to discern whether accretions attached to and became a part of that particular area? Is that possible to determine from that map?

(R. 3182) A. No, sir.

Q. Now, why is that?

A. It was not mapped at that time.

Q. So that you have a blank there at that time?

A. We have a blank. You have no geomorphic form. I have no evidence indicated on that map from which I could determine what the origin of that particular area was.

• • •

(R. 3194) Q. What kind and type of investigation did you make in connection with the actual investigation and determination of the location of the northern high bank as it exists today?

A. I personally have walked all along that high bank, and, of course, at the time of my investigations I had the U. S. Corps of Engineers' 1974 topographic map, so that I could identify my position and I could identify the present high bank and was able to establish that the present Iowa high bank is as depicted on those recent exhibits, the topographic maps.

• • •

(R. 3197) Mr. Veeder: And that's all I want to be sure of. You had the condition before, Your Honor, and I just wanted to clear it up. Now, Dr. Robinson, relating, again, to your investigations along the northerly high bank, what—based upon your soil surveys, based upon your analysis of the geology there, your drillings, the core analyses you have made working with Dr.—working with Mr. Elmer Clark in locations, will you state into the record whether in your opinion there has been an alluvion or (R. 3198) alluvium, whatever one you want to use, attached to the northerly high bank by action of the 1912 river or any other river?

A. No.

The Court: No, you will not state it?

The Witness: No, there has been no alluvion attached to the northern high bank.

Mr. Veeder: And based upon your investigations, Dr. Robinson, what—do you have an opinion as to the mode

and method that the phenomena of the departure of the 1912 plus river—how did that take place?

A. The 1912 plus river made a sudden and abrupt change from the position along the northerly high bank to a position somewhere to the south of the trees that are shown and taken from Tribe's Exhibit 105-A, and it was a sudden and abrupt change and that river had to move farther south in that change.

Q. Now, why do you say that, Dr. Robinson?

A. Had there been a slow and imperceptible movement of river eroding its banks—southern banks and depositing alluvium against the northern high banks, that erosion would have destroyed those trees which were there until—one group is still there, but the other one, the tree which is labeled as an age of 1909 was cut down recently. So, the river was in the position against the northern high bank (R. 3199) sometime after 1912, which is a younger date than the years for those trees of 1904 and 1909. It had to leave there by a sudden change which puts the river to the south of those trees and left this abandoned channel which is in evidence on the ground today.

Q. Now, what—you say there was no deposition of alluvium. What are the deposits that are presently at the foot of the lower high bank—the northern high bank—the northern high bank and the kind and type of deposits that are situated there today based upon your personal knowledge?

A. Based on personal knowledge which included drilling a series of holes down through the materials in

the surface, the material at the base of the northern high bank consists, principally of clay and silt with a few stringers of sand. Material which is typical of deposits that are found in oxbow lakes or abandoned channels. Channel fill deposits.

* * *

(R. 1721)

RAUL McQUIVEY

Q. And you have indicated that, as I recall, post-1906?

A. Yes.

Q. Now, Mr.—Dr. McQuivey, did you make any investigations at or near the foot of that high bank in making your soil investigations?

A. Yes. I drilled holes 46 and 45 in Section 19, Range 46 West, Township 84 North, and found those samples to be primarily made up of silt and clay. Again, we could only go a short depth in that area before we ran into the water table. But approximately ten to twelve feet we found silt clay.

* * *

(R. 1722) Q. Now, if you would just swing on down to the easterly bank, the extremity there, did you make similar investigations at the foot of that bank?

A. Yes, I did. Drill hole number two is just off the Section corner 28, 27, 33 and 34 of Township 84 North, Range 46 West, this far easterly hole. And that hole went to a depth of twenty feet. And we found nothing in that hole but silt and clay.

Q. And what was indicative to you in regard to your drilling (R. 1723) at the foot of the northerly bank and the easterly high bank respecting the occupants there—occupancy there of the Missouri River?

A. Yes. As I testified, one of the reasons for taking many of these holes was to determine if that was a major old channel. And indeed, the soil sample indicates that there was a deposit or deposition of approximately twenty feet of silt and clay.

. . .

(R. 1740) JUNE GEADELMANN,

having been called as a witness on behalf of the Defendants, having been first duly sworn, was examined and testified upon her oath as follows:

Direct Examination

By Mr. Smith:

Q. Will you state your name, please, Mrs. Geadelmann?

A. My name is June Geadelmann.

Q. And where do you live?

A. I live in Mapleton, Iowa.

Q. Do you hold some County office in Monona County?

A. Yes. I am County Auditor for Monona County.

. . .

(R. 1765) JACK VIRTUE,
the witness herein, being duly sworn, testifies as follows:

The Court: How do you spell your name?

The Witness: V-I-R-T-U-E.

(R. 1766) The Court: Thank you.

. . .

Direct Examination

By Mr. Smith:

Q. Would you state your name, please?

A. Jack V. Virtue.

Q. And where do you live, Mr. Virtue?

A. Onawa, Iowa.

. . .

(R. 1937) By Mr. Veeder:

Q. Mr. Virtue, in light of your background and history in connection with this area that is here involved, you have a direct and immediate and a monetary interest in the outcome of this litigation of Tribe vs. Lakin, Wilson, Iowa, et al.; you have a direct and (R. 1938) immediate and personal monetary interest in the outcome of the litigation entitled United States v. Lakin, Wilson, Iowa, et al.; right?

A. Yes.

Q. So it is important to you personally how this case is resolved?

A. Factually, I hope.

Q. What?

A. Factually, I hope.

Q. And monetarily?

A. Well, the land that I have an interest in is not worth that much. But it is a duck hunting spot.

Q. But don't you have certificates out in regard to abstracts of title and also certifications as to the correctness of surveys?

A. Yes.

Q. You do?

A. (Witness nodding head in an affirmative manner.)

Q. So what you have said covers it; you have a personal interest?

A. Yes.

Mr. Veeder: I have no further questions.

. . .

(R. 1955) Mr. Clear: M8 is the description contained in the deed between Charles Lakin and the State of Iowa?

The Witness: Yes.

Mr. Clear: And N8 is the description contained in the deed between the Petersons and who?

Mr. Cullison: Lakin—or Peterson—It is a quit claim deed of Peterson to the State of Iowa.

Mr. Clear: And the third is just—T8 is just a plain legal description?

Mr. Cullison: I'll state for the record that T8 is a copy of the legal description contained in the States' Answer and Counterclaim.

. . .

(R. 1957) Mr. Cullison: I wanted to show, first of all, the legal description of the land claimed by the State of Iowa in its Answer and Counterclaim. Exhibit 0 is for the purpose of displaying to the Court what parcel of land is involved. The functional legal description is contained in the Answer and Counterclaim of which T8 is a copy.

The Court: I see. Oh, I can see no prejudice to the interest of anyone to allow those in, so they will (R. 1958) be received.

Mr. Cullison: I have no further questions.

. . .

(R. 1966) RAYMOND L. HUBER,

after having been first duly sworn, was examined and testified as follows:

Direct Examination

. . .

(R. 2141) Q. All right. Now, taking a look at Tribe's Exhibit 105, which is the 1923 river, do you have an opinion, Mr. Huber, as to whether or not the land that is located from the northerly high bank to the south to

where the river is positioned in Section 23, 24 and 19 in Township 24 North, Ranges 10 and 11 East, whether or not that land is all accretion to the Iowa high bank?

Mr. Veeder: I object to the asking of the opinion. Go ahead if he has an opinion.

The Court: You can answer yes or no.

A. Yes, it is.

By Mr. Peters:

Q. Yes, you have an opinion?

A. Yes, I have an opinion.

Mr. Veeder: I object. No foundation whatever. This witness is not qualified to testify in this regard. I interpose objection of opinion under the circumstances.

The Court: Overruled.

* * *

(R. 2148) By Mr. Peters:

Q. If there was any remnant of the Barrett meander lobe as surveyed in 1967 still left—

The Court: 1867?

Mr. Peters: 1867, I'm sorry.

By Mr. Peters:

Q. —still left by 1928, would there be vegetation on the land forms that remain which would indicate that the land form was intact still, the remnant of the old meander lobe of the 1867 Barrett Survey?

A. You could identify it as such if it were high land, area of high land as equally high as the original high land

included in the Barrett Survey, or if it had timber on a high land area that was of equal height to the area occupied by the timber as shown on the Barrett Survey.

Q. From your examination of any of the maps that have been received in evidence in this case, do any of those maps show any symbols indicating vegetation that would be fifty-five or sixty years of age within the Barrett (R. 2149) meander lobe?

Mr. Veeder: I object to this, Your Honor. This witness is not qualified from the standpoint of any aged trees or vegetation. There is not a scintilla of evidence that he is qualified to answer this question.

The Court: Overruled. I will let him answer.

A. As of what date?

Q. As of 1928.

A. As of 1928?

Q. Or any of the maps prior to '28 for that matter that you have seen and examined.

A. No, sir. I can see no trees in there that would be of age sixty-five approximately, because it's mostly a willow area, sandy area, willows and timbers, scattered willows and brush. Scattered timbers and willows. And from the progress that we have noted on the previous maps as to how this is filled in, we could not have any vegetation, any trees of an age sixty-five.

Q. Because it was all washed away, wasn't it?

A. Yes, sir.

* * *

(R. 2208) By Mr. Veeder:

Q. Now, you were not, you are not a registered engineer, are you?

A. No, sir. That was not required at the time.

Q. Yes or no? Just yes or no.

A. I cannot answer all questions yes or no. I have to explain.

Q. Were you a registered engineer, yes or no?

Mr. Peters: Your Honor, I don't think the question imposed on the witness a requirement to answer yes or no unless the witness can answer yes or no.

The Court: I think it can, because on redirect if you wish to ask him whether or not it was required, (R. 2209) you are not a registered engineer number one; isn't that correct?

The Witness: I am not a registered engineer.

The Court: Go ahead.

By Mr. Veeder:

Q. You are not a registered land surveyor?

A. I am not.

Q. You are not a geologist?

A. I am not.

Q. Now, and you are not a topographer?

A. I am not.

Q. So as a matter of fact, your responsibilities as I perceive them related to building, may be only designing

some structures that related to the prevention of erosion along some of the banks; is that right?

Mr. Peters: Object to the form of the question. It's not a question, it's a statement of the questioner asking the witness to either agree or disagree with it. And it's improper in that form.

Mr. Veeder: I will rephrase it, Your Honor. I would like to move along.

The Court: All right. Rephrase it.

By Mr. Veeder:

Q. Your job was to design structures involved in the protection of banks, is that it?

(R. 2210) A. Over the entire reach of the river, yes, sir, under the Omaha District.

* * *

(R. 2298) Mr. Veeder: Well, once again I'll start again. We observe a channel directly east of 29 on U, isn't that right?

A. Yes, sir.

Q. And that channel extends the whole arch of the easterly high bank down to the thalweg as we perceive it just north of Section 5 of 83, 46, right?

A. Yes, sir.

Q. Now, is it not true that when waters are present there cannot be accretions across the water, is that not true? Now, the answer can be yes or no.

(R. 2299) A. Yes, there could be.

Q. Accretions across a body of water?

A. Certainly. If there is sediment carried in suspension it could be carried across this body of water and deposited over onto another bar on the other side.

• • •

Mr. Veeder: Now, let me ask you this question: Are you stating that in your understanding that accretions are of such character that when there is a backwater such as I'm pointing to that archs around the easterly high bank, that those depositions go in there and sink to the bed of the stream, the bed of the slough or whatever it is, now? Are you calling that accretions?

(R. 2300) A. That is deposition.

Q. Answer the question. Are you calling those accretions?

A. Yes, those are accretions.

Q. To the bed of the—to the bed of this slough?

A. Well, it is a deposition to the bed of the slough. Call it deposition or accretion, it is a building up of this slough next to the Iowa high bank in the high water period.

Q. And, then, we are looking at a situation where you have a separate bar which is totally separated, here, by this channel, are we not? I'm pointing to bar A with the easterly high bank in 28 and just a little smidgit left of 33 and down to 34?

A. We don't know that it is continuous, because it stops east of Section 29.

Q. But, as far as you can see it is continuous down here to 29, is it not?

A. That's right.

Q. And that was —that is the old 1875 channel, is it not?

A. It is.

Q. Yes. So, as a matter of fact, the bar as there depicted is totally separated in that area—as far as Exhibit U shows, it is totally separated by a body of water from the easterly high bank?

A. As shown on the map it is.

• • •

(R. 2024) HAROLD WIESE,
the witness herein, being duly sworn, testifies as follows:

Direct Examination

(R. 2325) By Mr. Burke:

Q. Could you give us your name and address?

A. Harold Wiese, Omaha, Nebraska.

Q. By whom are you employed?

A. LeDioyt Land Company.

Q. And are their headquarters in Omaha?

A. Yes.

Q. What is the nature of the work you do for them?

A. Farm management and farm sales.

Q. For how many years?

A. I have been in this nature of work for twenty some years.

Q. In that work did you do both farm management sales and appraisals?

A. Yes.

. . .

(R. 2342) *Cross-Examination*

By Mr. Veeder:

Q. Were you present when the Bureau of Indian Affairs and the Omaha Indian Tribe went into possession? Were you there yourself?

A. Not that exact day, but was in and out of the property at different times.

Q. You were not there when—

A. Not the exact time.

Q. Were you aware that the Bureau of Indian Affairs police accompanied the Omaha Indian Tribe?

A. I was not present at the time they walked onto the land.

Q. So you don't know.

A. Just notified they were.

Q. But you don't know—

A. And the signs. No.

Mr. Veeder: No more questions.

. . .

(R. 2343) HAROLD DARYL JACKSON,

a witness called on behalf of the Defendants, being first duly sworn, was examined and testified on his oath as follows:

Direct Examination

By Mr. Burke:

Q. Tell us your name and address.

A. Harold Daryl Jackson, 508 North 12th, Onawa, Iowa.

Q. Mr. Jackson, are you the tenant on the Wilson farm?

A. Yes, I am.

. . .

(R. 2346) OTIS PETERSON,

a witness called on behalf of the Defendants, being first duly sworn, was examined and testified on his oath as follows:

. . .

(R. 2372-A) CHARLES LAKIN,

a witness called on behalf of the Defendants, being first duly sworn, was examined and testified on his oath as (R. 2373) follows:

Direct Examination

By Mr. Berkshire:

Q. Will you state your name, please?

A. Charles Lakin.

Q. And where do you reside, Mr. Lakin?

A. 1217 North 98 Court, Omaha, Nebraska.

Q. And you are the same Charles Lakin as one of the Defendants in the action of the United States of America versus Charles Lakin, which is being tried in this Court, is that correct?

A. Yes.

. . .

(R. 2392) *Cross-Examination*

By Mr. Veeder:

Q. All I say is it not rather unusual at this time and this late in the twentieth century to find a large piece of land that was never surveyed? Isn't that right?

A. There at that time were various other tracts up and down the river with accretion ground that had not been surveyed.

Q. It was rather a good piece of business to get land, (R. 2393) using it, utilize it for at least a period of ten years where it wasn't taxed; is that right?

A. You say where it wasn't taxed? I was ready to pay taxes on this the minute they put it on the tax rolls. All they had to do—

. . .

(R. 2394) By Mr. Veeder:

Q. In other words you were aware of Joe Kirk and the source of his title, weren't you?

A. Yes, I knew. I had met Joe Kirk. Joe Kirk was out on the land with me.

Q. You knew that he didn't have any patents to his land; isn't that right?

A. I didn't really know what Joe Kirk had in the way of patents. I knew what was delivered to me.

. . .

(R. 2395) Q. And that was in, as I see it, dated April 27, 1959, it was filed for record on May 18, 1959. And contained in that agreement, I will read to you an excerpt which appears in the last pages of the arrangement.

It says, "If any action should be started against the parties hereto with reference to any lines—or I think it must be land—on either part of the farm, both parties will join in defense of such action. Or if any action had to be started, both parties will join in such action and each bear one-half of the expenses thereof, irrespective of where the line may be.

"It is further agreed that if in any action a substantial number of acres are lost to any party arising out of any claim or cause of action, the existing or arising out of any condition existing at the time of execution of this instrument, and adjustments accordingly will be made between the parties as to such lost acreage."

Now, isn't that statement that I just read to you a very clear caveat among the parties that they were not very sure of their titles; isn't that a reasonable assumption?

(R. 2396) A. This is true. This is the reason we brought the State of Iowa in because my attorney had

told me the State of Iowa should definitely be made a part of this.

We were aware that the State of Iowa might make a claim to it. Brought them into the action. They did claim a portion of the land. We negotiated a settlement.

Q. And there were not—and you received no notice, no statement, no inference that these lands were never officially surveyed in the State of Iowa by the General Land Office? Did you know that?

A. Well, I just stated a while ago I employed a professional engineer, Jack Virtue, licensed professional engineer to make the survey. This is the basis that it was quieted on in the Courts.

Q. And no one even suggested to you that the Indians or the national Government might have some claim?

A. No.

. . .

(R. 2397) ROSS WILLEY,

after having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Peters:

Q. Sir, will you tell the Judge, please, your name.

A. Ross Willey.

. . .

(R. 2414) GEORGE W. PRICHARD,

a witness called on behalf of the Defendants, being first duly sworn, was examined upon his oath and testified as follows:

Direct Examination

By Mr. Berkshire:

Q. Will you state your name, please?

A. George W. Prichard.

Q. Mr. Prichard, what is your residence?

A. Onawa, Iowa.

. . .

(R. 2423) Q. Entered right there?

A. Where I made the X there, that's where we came out of the bar.

Q. Thank you, Judge. Now you may sit down again. Would you describe to the Court where you went on horseback, if you remember?

A. Well, as I remember we started off to the right. That would have been west. And we followed up along the upper—not up to the bank, but we could see where the high bank was. And we wandered out there and got clear out to the river. I don't know just where. He directed, and we were talking and visiting, and now I don't know exactly where we went. But clear out to the river, and we come along the river bank a ways and turned down east and almost to what we call the English Bayou, and back up to where we started from.

Q. During that time would you describe the condition of the property?

A. Well, it was new bar land, and there was lots of willows. They were small, maybe the size of your fingers.

There would be spaces with sand dunes, nothing on it, and spots, quite large places, where there would be sweet clover which built up the land very well, and which he picked out for a good watermelon site, because sweet clover is very good for that.

. . .

(R. 2442) Q. This was in the '20's, wasn't it?

A. Oh, yes.

(R. 2443) Q. And, you were able to wade across the old water channel remnant there with hip waders?

A. We did.

. . .

(R. 2443) JOE KIRK, JR.,
the witness herein, being duly sworn, testifies as follows:

. . .

Direct Examination

By Mr. Berkshire:

Q. Would you state your name, please?

A. Joe Kirk, Jr.

. . .

(R. 2466) MERLE CUTLER,
a witness called on behalf of the Defendants, being first duly sworn, was examined and testified on his oath as follows:

. . .

(R. 2492) DR. GEORGE R. HALLBERG,

a witness called on behalf of the Defendants, being first duly sworn, was examined upon his oath and testified as follows:

Direct Examination

. . .

(R. 2610) Q. What causes the channel to come to that kind of a position between 1879 and 1890?

A. It's probably difficult to say exactly, but I suspect that one of the major changes was probably the—

Mr. Veeder: Are we back to suspecting again, Your Honor?

I think this is truly important.

If he has got an opinion, fine, but I can't see cross-examining on suspicion.

The Court: Are you objecting?

Mr. Veeder: Yes.

The Court: Sustained.

By Mr. Peters:

Q. What's your opinion as to things that occurred between '79 and 1890 that caused that channel—

Mr. Veeder: I think we have to have more foundation. I submit that there is no foundation from the period of '75 to '79 to 1890 at this point. There is not enough foundation.

Now, he is being asked an opinion, Your Honor, as to what are the differences between 1879 and 1890 and there

is not a scintilla of evidence that I know of for him to come up with an opinion in response to the (R. 2611) question that's been asked.

. . .

(R. 2617) Q. Between bar B and A—

A. Bar B and A or bar D and bar A. It is possible if we dropped this water level in 1879, this all might be—if we dropped down to a low water stage—this might be and the total emergent bar or land mass in this area, but then—in 1890 as we see this area has been overflowed, we probably had overbank deposits being formed in there which help go to increase or raise the elevation, the stabilization, and helped stabilize the bars that have formed back in this region.

Q. Does the land formed on the 1890 map east of the main channel of the river, which was shown as a water area between bars B and D and bar A in the 1879 river, has that been formed by accretion to the Iowa bank—

A. Yes, sir.

Q. —as the river moved to the west?

A. As the river moved to the west.

Q. And this has been deposition of sediments, silt and clays and sand, whatever might flow in during certain periods of high water?

A. Well, it's been filled in—

Q. Is that the kind of material that goes into that area?

(R. 2618) A. That would be the kind of material that went on top. This was, in essence, all bar deposits as the river migrated from the east high bank to its 1879 position.

Q. That would be sand—

A. Sand, and again, the typical bar deposits of the Missouri River in this part of the river as it adjoins Iowa would be the rather uniform, fine to medium sand, and there is bedding, stratification, and its whole texture. It's rather uniform with depth.

As the river migrated, it would be leaving accretion sand deposits. There would always be overbank deposits on it from subsequent events.

. . .

(R. 2620) Mr. Veeder:

. . .

(R. 2621) We have got a lot of confusion to begin with. So I would suggest that Your Honor, if Your Honor decides to do so, will put the sections on there. But I do think that this is going into the record. Section 32 is not there.

The Court: The Appellate Court, they have enough difficulty as it is with some decisions. This will be doubly hard without any numbers on them. They better be placed there if you are going to use them. Or I would suggest maybe you could use other exhibits if you have them on there.

. . .

(R. 2757) Q. Will you tell me which river it was and how—we are back where we were again. We are back to the point where you have to assume a river concerning which there's no evidence that came in here, obliterated this, rebuilt it, grew some willows, and wound up over here in 1879. Isn't that where we are?

A. The river between—when it hit, reached the high bank, the eastern high bank and when we see it in 1879 migrated and progressed to the south and east.

Q. But you have—

Mr. Peters: South and west.

The Court: South and west.

The Witness: South and west. I'm sorry.

By Mr. Veeder:

Q. But you have no evidence—

(R. 2758) A. We have no maps between those periods of time.

Q. That's right. So it is simply a matter of what do we call this? An educated guess as to what happened? Isn't that right? We have to say—

A. Any opinion about how the river moved between 1875 and 1879—

Q. Has to be—

A. —is indeed an educated guess no matter whose opinion or what his opinion is, sir.

Mr. Veeder: Your Honor, I move to strike this witness' testimony. He says he has an educated guess in here. And we can't tolerate educated guesses.

The Court: Motion denied. We are arguing semantics.

Mr. Veeder: I just wanted to be sure it was in the record it was an educated guess, Your Honor.

* * *

(R. 2854) PHILIP BURKE

Philip Burke, a witness called on behalf of the Defendants, being first duly sworn, was examined and testified on his oath as follows:

* * *

(R. 2863) MRS. A. W. ENGLISH,

after having been first duly sworn, was examined and testified as follows:

* * *

(R. 2884) ALAN G. LOFTIS,

a witness called on behalf of the Defendant Travelers Insurance Company, being first duly sworn, was examined upon his oath and testified as follows:

* * *

(R. 2894) JOHN F. KENNEDY,

the witness herein, duly sworn, testifies as follows:

* * *

(R. 2910) Q. Have you visited the Blackbird Bend reach of the Missouri River, which is the subject of the litigation?

A. Yes, I have.

Q. And can you just describe briefly the nature of your visitation? What you did, what you were looking for and what you saw?

The Court: When you got there, when you made the (R. 2911) visit.

The Witness: Okay. The visit was made in early July of this year, during the first two weeks of July.

Mr. Veeder: Did you say the visit?

The Witness: Was made.

Mr. Veeder: The visit?

The Witness: Yes, sir.

Mr. Veeder: Thank you.

. . .

(R. 2912) Q. Now, in your judgment and on the basis of your experience, is there anything particularly unusual or atypical about the Blackbird Bend reach of the river?

A. No. I—

Mr. Veeder: I would object to this question, Your Honor. The man says he made a visit and flew over. And I respectfully submit, he wouldn't have background, knowledge or understanding adequate to respond to that question. And there appears to be no foundation whatever upon which he can make response.

The Court: Overruled. Overruled. Go right ahead.

. . .

(R. 2940) Mr. Veeder: Now, Dr. Kennedy, you say you were on the ground one day?

The Witness: Yes, sir.

. . .

The Witness: I have been on the ground once. I have been over it more than once in an airplane.

. . .

(R. 2942) What happened to extend this lobe so far to the east clearly was this bend was attacking the outer side of the bank. The fact that there is a high bank here suggests that was roughly the limits of the meander belt which had been formed by the over geologic time periods by the lateral migration of the river and its going back and forth across the valley, and the river had progressed to this high bank.

At this stage it's in a condition of extreme meandering, but it got there by scour of the outside and deposition and lower flows, as well as higher flows on the innerbank.

Now, it had reached this, what Friedkin refers to as its limiting width of the meander in this state.

Now, between 1875 and '79, I believe one of two—or probably both things happened. Let me put the most important one first.

. . .

(R. 2944) Q. Look at Tribe's Exhibit 99 then and tell me what has caused the formation of the bar in Sections 33 and 28, which we have labelled bar A on Exhibit N-3?

Mr. Veeder: I object, Your Honor. There is absolutely no foundation whatever for this opinion as to what made that bar.

The Court: Overruled.

* * *

(R. 2947) Q. The question essentially is what's your opinion as to how bar A, as is shown on Exhibit N-3, during the recess we put up U because it has the thalweg soundings on it. How was that formed during the period between 1875 and 1879?

Mr. Veeder: I have an objection to this and it was overruled, Your Honor. Isn't that the record?

The Court: Right.

The Witness: All right. I have testified that it is my judgment that this whole convex bar had been obliterated during this period of the high flows that occurred in the four years between '75 and '79.

Now, as the channel progressively moved to the west and with the thalweg shifting westward, this would become a river of diminished velocity, a slack (R. 2948) water area or area of lowest velocity. Consequently, sediment that gets into this area would tend to be deposited because of the diminished sediment transport capacity of the water flowing in this area.

Additionally, when this was all inundated there would be moving through it here and ensemble of very large sand waves or sand dunes.

By Mr. Peters:

Q. Were these moving along the bottom?

A. These were moving along the bottom, yes. These can have characteristic lengths in the Missouri River of up to several hundred yards, and characteristic heights of crests of ten to twenty feet. These were brought in. It appears some of these were left behind, which I suspect formed these features.

So this whole area becomes a sheltered area with water getting into it, having diminished sediment transport capacity. So it starts to silt in. But I think this bar was formed principally probably when the principal part of the channel was moving to the west and the flow coming around here tended to form a point bar. One can even see a remnant of a small one at this point, which is just below the number 29, extending into the channel.

* * *

(R. 2950) By Mr. Peters:

Q. Where that chute is?

A. Where that chute is. And that is a—consequently, a relatively deep area. Now, as the flow comes around what at one time between '75 and '79 was this convex bar to the north and east, there forms a point bar that submerged, protrudes out into the channel. I believe this likely was formed during a period of very high flow. And sediment would be deposited in the wake or downstream from that until this progressed on around.

Meanwhile, these other bars became deposited, I believe, during some recession.

Q. Bars B and D?

A. B and D. And during subsequent rises and revisions and even during ordinary flows, water brought sediment in here that was deposited, and deposited over in this area. Then when we got to a somewhat lower flow when this was made in '79, lower than those we have reported for the years between '75 and '79, we see this protruding.

Q. Is this an accretion bar?

A. It's an accretion to this area up here in that when the flow receded this would be attached to the Iowa high bank.

(R. 2951) Q. Easterly high bank?

A. Easterly high bank, yes, sir.

* * *

(R. 2952) Q. Is that ground likewise accretion to the Iowa high bank, or accretions to the accretions to the Iowa high bank?

Mr. Veeder: Object to that. There's absolutely no foundation to this, Your Honor. Accretions to what and where, and he is looking at a river full of water.

The Court: Overruled.

* * *

(R. 2953) By Mr. Peters:

Q. Now, on the 1875 river we have the Barrett Survey line superimposed. Are there in your opinion—there's an area outside to the east of the Barrett Survey line labeled on Exhibit 96 "low sandy point subject to frequent inundation." Is that accretion to the Barrett Survey land

as surveyed by Barrett in 1867 as the river moved to its 1875 position?

Mr. Veeder: Renew my objection. There's no foundation.

The Court: Overruled.

The Witness: (Answer) Yes, that is accretion. And it was left behind as the river moved progressively eastward by the mechanism I described earlier this morning. Now, we are seeing this material, of course, was probably deposited or had to be deposited at a high flow.

* * *

(R. 2955) By Mr. Peters:

Q. What I am trying to find out, Dr. Kennedy, is whether you have an opinion as to whether any of the land that we see lying either north or east of the '79 thalweg, whether any of it is land that you can identify as being land that would be within the Barrett Survey or any accretion to it as shown on the '375 map?

A. Yes, I have an opinion.

Q. And what is your opinion in that regard?

Mr. Veeder: I object to this, Your Honor. (R. 2956) Absolutely no foundation in this man testifying in regard to the location of any land within the Barrett Survey or anyplace else.

The Court: Overruled. You have an opportunity to cross-examine. Go ahead.

The Witness: As I have tried to point out several times, I am confident that this Barrett bar was completely re-worked during the period of 1875 to 1879.

By Mr. Peters:

Q. Eroded away?

A. Eroded away, and consequently much of the material that we see in 1875 as Barrett bar has been taken away and is now on its way to the Gulf of Mexico.

* * *

(R. 2967) Q. Now, using Tribe's Exhibit 105, and using as a point of reference the 1867 Barrett survey line, the north limb of it that comes down through Section 24 and, then, travels to the east, do you have an opinion, Dr. Kennedy, as to whether the land lying to the east and to the north of that line is by 1923 all accretion land accreted to the northerly Iowa high bank?

A. Well, it is clearly attached to the northerly high bank that we see in this map, and we don't see any intervening water. And, I believe there is little doubt that as the river moved subsequent to 1906, or even 1890, it did so in the manner I just described by eroding away on the outside of this curve which in 1923 is shown in Section (R. 2968) 15 of Township 24 north, Range—I can't see it on this map. In the Nebraska designation, Township 24 north, Range—well, I'll identify it another way.

Q. The range lines are these lines here.

A. Range 10 east. This is an area, clearly, of erosion. This is deposition. So, this has moved southward, perhaps, for surely, sometimes faster than other times, but, progressively reworking the surface of the land as it progressed southward.

Q. Now, the mapping on 1923 by the Corps in the area that we've just discussed is only that mapping which

is shown on Exhibit 105. So, the bare or white area is of an unknown quantity to us in 1923. But, the Corps in their 1927 map does map that area. And, I put up for comparison purposes, the Tribe's Exhibit 106 which shows the nature of the land forms that lie to the east and to the north of the north limb of the 1967 Barrett survey to give you some idea of the geologic features that may be there. Does that alter in any way your opinion as to whether or not the land north and east of the Barrett survey is accreted to the Iowa high bank?

A. No, we still—there are several remnant channels as you can see as this progression—process of consolidation has occurred. Clearly, all of the channels have this general convex to the southwest behavior, and I would (R. 2969) expect them to be working their way by scour on the southwestern side, deposition on the northeast side towards the southwest.

* * *

(R. 2972) Q. I'll be glad to rephrase the essence of the question. You stated, as I heard you say, this map was reflective of the southern progression of the river to its position as depicted on 105.

A. I testified that the river got to its position shown in Exhibit 105 in 1923 from the position which one can conclude, logically, that it had in 1912 by a process of erosion on the southern side after passing around this bend to the left.

(R. 2973) Q. So, you are not saying that this map here, 105, is reflective of that progression?

A. This map does not show any progression. It shows the way things were at that time.

Q. Did you know that this is the end of the mapping, that this is the only mapping that was done by the Corps of Engineers in 1923?

A. I knew that this area had not been mapped. The area to the north and east of the river channel and the Barrett survey line.

. . .

The Witness: I testified or I stated that this line which we call the Omaha Indian Reservation on Exhibit 106, which is, roughly, the easterly high bank, that position likely was—could have been achieved by the river (R. 2974) in its eastward migration.

Q. Didn't you say, though, and I'm going back, again—Did you say that this channel, this water that is shown in Section 29 of Township 84, Range 46 west and that continues on westerly was the remnant of the main channel of the 1906 river? Now, did you or did you not say that? That's a yes or no question.

A. I did not say it in those words.

Q. Or did you or did you not state in substance, then, that this river that I'm pointing to—

The Court: In Exhibit—

The Witness: 106.

Mr. Veeder: —on 106, that's the 1927 Missouri River, is the remnant of the 1906 river as depicted on Wilson D-4, isn't that what you said?

A. It is reasonable to assume that that is what it is, because the river has—this has very nearly the same position as this bend of the river shown in the 1906 map.

Q. Did you or did you not say it?

A. I'm saying it now.

Q. You are saying it now. So, we have a situation where the river—this river—this 1906 river that we're looking at here on Exhibit 106, progressed northward to the 1920-1912 location on L-4, is that what you are telling us?

A. Well, I pointed out that in the 1912 map one has to make (R. 2975) certain assumptions as to where the river was. At the stage at which it was mapped it is reasonable to assume that it flowed around this sandbar across 19 and 20 and was directed towards or headed towards this high bank that comes through Sections 20 and 19.

. . .

(R. 2979) Q. All right. What are you talking about then?

A. I am saying a part of this I believe to be a remnant of the 1906 channel. Now, I have stated repeatedly that from time to time this whole area is inundated. Bars form, new subchannels form during the period of reworking in these high flows of very active sediment transport. And I think its entirely possible that, for example, this is a remnant of another event at some other time—I don't know when—which came together with this.

. . .

(R. 2993) By Mr. Veeder:

Q. Now, is it not true when there was accretion from the northerly high bank, as you say, that it would neces-

sarily obliterate and take out the 1906 remnant when it came back down south as you said that it did, isn't that essential?

A. The accretion does not occur as a uniform deposition over all areas. You can have, as I testified, some remnant channels progressively becoming silted in, but which still transport some sediment.

The areas over which the deposition occurs preferentially are those in higher elevation and shallower depth, lower sediment transport.

. . .

(R. 3000) By Mr. Veeder:

Q. Now, the next map that we allude to in this sequence as offered by the Tribe, have you studied the field notes on that, the Barrett field notes?

A. I can't say that I have studied them. I have seen them, but not—

Q. But you have not studied them in detail?

A. I have not.

Q. Were you aware, then, that there were two phenomenon outlined by Barrett which might presage what happened (R. 3001) to the meander lobe? One, he describes a high water channel. Were you aware of that?

A. I was aware that this channel has been shown on the map.

Q. And that intersects the lobe west of the common range between Ranges 10 and 11 in Township 24?

A. And he did specify that that was a high water channel.

Q. Yes. And he also specified that, if you recall, that it did presage a possible cutoff; is that right?

A. I have heard it or read it in other testimony.

Q. But you're not arguing on that?

A. (No response.)

Q. Now, there was another phenomenon you alluded to, the relinquishment of allotments by the Indians. Were you acquainted with the area which lies in Sections 14 and 15 of Township 24, Range 10 East, that there was a low area as depicted by Barrett? Were you acquainted with that situation?

A. No, I don't recall having—

Q. You're not?

A. (Witness shaking head in a negative manner.)

. . .

(R. 3031) Q. You do not know and you cannot find from looking at that map the Iowa lands to which the sandbar to which you alluded and which has willows on it accreted to the Iowa bank; is that right? You don't know where it accreted to, do you?

A. Well, accreted to do not refer to that as a particular point. There's an area in which they merge together. And—

Q. Go ahead.

A. I cannot say specifically that they were merged together here or at this point or at some other point.

All I can say is I would expect as rivers normally behave for this to be an area of deposition, and deposition would occur preferentially along the Iowa bank.

* * *

(R. 3032) Q. All right. We are looking, then, at this island that's one area that's surrounded by water that has willows on it, right?

A. Yes, that's what the map shows.

Q. So once again we have a period up where the land you say had been obliterated, completely restored, and willows grow?

A. I didn't say completely restored.

(R. 3033) Q. You said restored. Certainly it was restored to some degree to have willows.

A. That soil was redeposited.

Q. And you don't know just when?

A. Sometime between '75 and '79 according to these maps.

Q. But you don't know when it occurred?

A. Not with more accuracy—

* * *

(R. 3067) HAROLD M. SORENSON,

a witness called in his own behalf, having been previously duly sworn, was examined upon his oath and testified as follows:

* * *

(R. 822) CHARLES S. ROBINSON

A. Tribe Exhibit 91 is a sample of a channel fill, or clay plug. It is the material that forms in an abandoned channel, and it consists principally of clay with a little silt and sand and, characteristic of it, is organic material.

* * *

(R. 1615) RAUL McQUIVEY

. . . have two samples right against the high bank which are basically silt clay, indicating the remnants of an old channel. Those are samples 46 and 45.

* * *

(R. 2824) GEORGE HALLBERG

By Mr. Veeder:

Q. Mr. Witness, would you take Exhibit 29 down. Now, right beside you right on the bench. I understand your opinion when the river by erosion moves from the easterly bank westward, it leaves behind it channels with river channel deposits in them and that the accretions do not have a homogeneity—no, a continuity in regard to the kind and type of soils that are left; is that correct?

A. Do you mean river—when you say river channel deposits do you mean channel fill deposits—

Q. Yes.

A. —as have been discussed? Where you have old channels which have formed, you have got channel fill deposits, because they form subsequent to the channel having been left there. As these have been discussed, these fine-textured silts and clays which are left behind in these channels are materials which fill in this channel subsequent to its having been left on the flood plain.

* * *

(R. 820) CHARLES S. ROBINSON

A. Exhibit 89 is a sample taken from a Blackbird Bend area, of the material in a point bar deposit. It consists of a medium to fine sand, with minor amount of clay.

. . .

(R. 2587) GEORGE HALLBERG

A. Well, the general nature of bar deposits up and down the entire Missouri River Valley, as it joins Iowa, at any rate, are essentially fine to medium sand. Now, as these have been described by both Dr. Robinson and Dr. McQuivey, the bar deposits are rather uniform in terms of being within this grade size of sand, rather—well, rather uniform, fine to medium sand that goes to considerable depths.

. . .

(R. 821) CHARLES S. ROBINSON

A. The upper part of it, the upper two inches in this plastic tube, is overbank deposit, and it consists of fine silt and clay. And this is the material that is deposited by a stream over the area at the time of inundation and/or flooding.

. . .

IOWA EXHIBIT M-8

(R. 1954, 1958)

Charles E. Lakin et ux
Quit Claim Deed and Easement
State of Iowa

Filed for record this 28th day of May
A. D. 1965 at 11:55 o'clock A. M.

No. 1806 Paul McFarland, Recorder
Fee \$2.50

QUIT CLAIM DEED AND EASEMENT

KNOW ALL MEN BY THESE PRESENTS:

That CHARLES E. LAKIN AND FLORENCE LAKIN, HUSBAND AND WIFE, of Mills County, State of Iowa, in consideration of the sum of One Dollar and other valuable consideration, including settlement of disputed claims between the parties, do hereby quit claim unto THE STATE OF IOWA all our right, title, interest, estate, claim and demand in or to the following described real estate situated in Monona County, Iowa, to-wit:

All those parts of the following described Sections: Section 31, Township 84 North, Range 46 West of the 5th P.M.; Section 6, Township 83 North, Range 46 West of the 5th P.M.; Section 1, Township 83 North, Range 47 West of the 5th P.M.; and Sections 25 and 36, Township 84 North, Range 47 West of the 5th P.M., lying to the South and West of the following described line:

Commencing at a point on the Iowa-Nebraska Compromise Boundary Line of 1943 which is 117.43 feet North and 1365.40 feet East of the projected Southwest corner of Section 31, Township 84 North, Range 46 West of the 5th P.M.; thence North 39° 28' 30" West a distance of 612.0 feet, thence North 45° 11' 00" West a distance of 424.94 feet, thence North 66° 57' 30" West a distance of 332.51 feet, thence South 81° 40' 00" West a distance of 141.16 feet, thence South 62° 23' 30" West a distance of 151.12 feet, thence South 49° 37' 30" West a distance of 257.35 feet, thence South 49° 37' 30" West a distance of 257.35 feet, thence South 78° 31' 30" West a distance of 166.49 feet, thence North 82° 31' 00" West a dis-

tance of 572.90 feet, thence North 67° 29' 30" West a distance of 256.94 feet, thence North 57° 44' 30" West a distance of 466.86 feet, thence North 41° 54' 30" West a distance of 513.62 feet, thence North 9° 46' 30" West a distance of 754.32 feet, thence North 10° 38' 30" West a distance of 546.48 feet, thence North 24° 19' 30" West a distance of 271.25 feet, thence North 41° 30' 30" West a distance of 222.23 feet, thence North 67° 20' 00" West a distance of 415.31 feet, thence North 61° 37' 30" West a distance of 274.63 feet, thence North 71° 58' 30" West a distance of 351.45 feet, thence North 52° 33' 00" West a distance of 406.25 feet, thence North 50° 41' 30" East a distance of 21.16 feet, thence North 60° 42' 30" East a distance of 135.69 feet, thence North 46° 10' 30" East a distance of 122.15 feet, thence North 16° 45' 30" East a distance of 207.93 feet, thence North 4° 38' 30" West a distance of 155.96 feet, thence North 17° 02' 30" West a distance of 377.48 feet, thence North 20° 49' 00" West a distance of 159.95 feet, thence North 01° 12' 00" East a distance of 144.98 feet, thence North 09° 02' 30" West a distance of 177.97 feet, thence North 14° 24' 30" West a distance of 194.62 feet, thence North 04° 56' 30" East a distance of 182.30 feet, thence North 08° 51' 30" East a distance of 122.95 feet, thence North 02° 26' 30" West a distance of 234.50 feet, thence North 03° 57' 30" West a distance of 153.15 feet, thence North 02° 02' 30" East a distance of 146.55 feet, thence North 09° 06' 30" East a distance of 255.69 feet, thence North 08° 20' 00" East a distance of 14.61 feet, to a point which is one quarter mile North of the line or projected line between Sections 25 and 36, Township 84 North, Range 47 West of the 5th P.M., and 3543.5 feet due West of the Northeast corner of the SE $\frac{1}{4}$ of the SE $\frac{1}{4}$ of Section 25, Township 84 North, Range 47 West of the 5th P.M.

WHEREAS the grantee of this instrument has constructed a lawful partition fence on or near the line here-

inabove described, grantors do hereby grant to grantee, its officers, agents and employees, an easement for maintenance of said fence to the ground upon which said fence is built and to a strip of ground 10 feet in width adjacent thereto to the North and East therefrom. This easement for maintenance of said fence shall be permanent and perpetual, excepting only that if grantee shall fail to maintain said fence as a lawful partition fence, then and in that event, this easement shall automatically cease and terminate.

The grantors herein reserve to themselves, their successors and assigns an easement and right of access from their lands lying on the Easterly side of the line hereinabove described, and North of the point where said line intersects U.S. Army Corps of Engineers Dike No. 749.3, to the normal high water mark of the water which is located or lying West of said boundary line, but this reservation shall not be construed as authorizing or empowering grantors or their successors or assigns to utilize the ground subject to said easement for any agricultural or commercial purposes.

Each of the undersigned hereby relinquishes all rights of dower, homestead and distributive share in and to the above described premises.

Executed this 24th day of May, 1965.

/s/ Charles E. Lakin

/s/ Florence Lakin

State of Iowa, Mills County, ss.

On the 26 day of May, 1965, before the undersigned Notary Public in and for said County and State person-

ally appeared Charles E. Lakin and Florence Lakin, husband and wife, to me personally known to be the identical persons named in and who executed the foregoing instrument and acknowledged that they executed the same as their voluntary act and deed.

/s/ Donald L. Twaddle, Notary Public
in and for said County and State.

(Notarial Seal - Iowa)

IOWA EXHIBIT N-8

(R. 1954, 1958)

Raymond G. Peterson et ux
Quit Claim Deed
State of Iowa

Filed for record this 25 day of May
A.D. 1965 at 9:30 o'clock A.M.

No. 1739 Paul McFarland, Recorder
Fee \$2.50 Maxine Jensen, Deputy

QUIT CLAIM DEED

KNOW ALL MEN BY THESE PRESENTS:

That RAYMOND G. PETERSON AND MARJORIE N. PETERSON, husband and wife, of Council Bluffs, Pottawattamie County, Iowa, in consideration of the sum of One Dollar and other valuable consideration in hand paid, including mutual agreements between the parties which are not set out in detail herein, but which are made a part hereof by this reference, do hereby sell,

convey and quit claim unto the State of Iowa all our right, title, interest, estate, claim and demand in or to the following described real estate situated in Monona County, Iowa, to-wit:

Commencing at a point 3543.5 feet west of the northeast corner of the Southeast Quarter of the Southeast Quarter (SE $\frac{1}{4}$ SE $\frac{1}{4}$) of Section Twenty-five (25), Township Eighty-four (84) North, Range Forty-seven (47) West of the 5th P.M., thence North 08° 20' 00" East 242.73 feet, thence North 10° 26' 00" East 225.77 feet, thence North 21° 38' 00" East 137.83 feet, thence North 35° 58' 20" East 130.69 feet, thence North 23° 37' 20" East 104.80 feet, thence North 36° 32' 20" East 257.73 feet, thence North 19° 56' 00" East 298.73 feet, thence North 10° 12' 00" East 85.35 feet; thence North 20° 59' 40", East 125.24 feet, thence North 14° 06' 40" East 294.83 feet thence North 14° 16' 40" East 242.40 feet; thence North 05° 55' 40" East 248.81 feet, thence North 14° 35' 00" East 163.76 feet, thence North 01° 20' 00" East 142.12 feet, thence North 06° 30' 00" East 173.51 feet, thence North 02° 48' 00" East 257.10 feet, thence North 07° 01' 40" West 112.46 feet, thence North 13° 40' 40" West 52.72 feet, thence North 05° 12' 40" East 179.76 feet, thence North 01° 43' 20" West 174.60 feet, thence North 15° 16' 40" East 191.41 feet, thence North 02° 18' 00" East 330.05 feet, thence North 04° 58' 00" West 192.40 feet, thence North 01° 47' 20" West 288.02 feet, thence North 04° 47' 20" West 87.80 feet, thence North 08° 13' 20" West 342.64 feet, thence North 03° 07' 20" West 138.37 feet, thence North 13° 31' 00" West 261.14 feet, thence North 09° 45' 00" West 238.27 feet, thence North 03° 18' 40" West 286.32 feet, thence North 06° 05' 20" West 195.35 feet, thence North 01° 57' 20" East 182.41 feet, thence North 02° 01' 40" West 184.25 feet, thence North 30° 13' 20" West 11.89 feet, thence North 02° 11' 40" West 162.78 feet, thence North 22° 04' 20" West 84.42

feet, thence North 33° 36' 20" West 298.35 feet, thence North 45° 06' 00" West 214.78 feet, thence North 06° 46' 00" East 465.0 feet, thence North 01° 32' 00" East 500.0 feet, thence North 01° 03' 00" West 500.0 feet, thence North 13° 29' 00" West 500.0 feet, thence North 16° 34' 00" West 170.90 feet to a point which is South 89° 47' 30" West 847.40 feet from the North Quarter Corner of Section Twenty-four (24) Township Eighty-four (84) North, Range Forty-seven (47) West of the 5th P.M., said point being on the North Section line of said Section 24, thence West or Westerly along the North line of said Section 24 to the point where said section line intersects with the Iowa-Nebraska State boundary line as fixed by 1943 Compact between said states, thence Southerly along said Iowa-Nebraska State boundary line to the point where said boundary line intersects the South Quarter Quarter line of the aforementioned Section 25 extended West to intersect said state boundary line, thence East to point of beginning. The above described real estate being situated in Sections 24 and 25 and possibly partially in Section 26, all in Township 84 North, Range 47 West of the 5th P.M.

Each of the undersigned hereby relinquishes all rights of dower, homestead and distributive share in and to the above described premises.

Executed this 4 day of May, 1965.

/s/ Raymond G. Peterson

/s/ Marjorie N. Peterson

State of Iowa, County of Pottawattamie, ss.

On this 4 day of May, 1965, before the undersigned Notary Public in and for said County and State, personally appeared Raymond G. Peterson and Marjorie N.

Peterson, husband and wife to me known to be the identical persons named in and who executed the foregoing Instrument and acknowledged that they executed the same as their voluntary act and deed.

/s/ Dorthy Ann Snethen

Notary Public in and for said
County and State.

(Notarial Seal - Iowa)

TRIBE'S EXHIBIT NO. 7

(R. 11, 13)

DOCUMENTS RESPECTING THE SELECTION
BY THE OMAHA INDIAN TRIBE OF THEIR
RESERVATION, PURSUANT TO THE
TREATY OF 1854

General Land Office
March 19th, 1856

John Calhoun, Esq.
Surveyor General
Wyandotte, Kansas

Sir

Enclosed herewith I transmit to you the following papers. A copy of field notes of the Omaha Reservation surveyed by W. Barnum under the instructions of the Indian Bureau together with a plat of the same & a copy of a communication from the Commissioner of Indian Affairs dated 13th instant in reply to my letter of the 10th of the same month which [illegible word] the inquiries as follows; viz.;

Whether location of the Omaha Reservation at Blackbird Hills was to be treated as the permanent

location, and if so whether in virtue of the exchange of the location, the Indian title is extinguished to the tract of land stipulated in the first article of the Treaty and described as lying north "of a line drawn due west from a point in the centre of the main channel * * * to the western boundary of the Omaha country". Those inquiries having been answered by the Commissioner of Indian Affairs in the affirmative, the foregoing named papers are sent to you for your information and action in conformity with the instructions from this office in similar cases. Respectfully, I am

Thomas A. Hendricks
Commissioner

Department of the Interior
Office of Indian Affairs
March 13th, 1856

Sir:

I have to acknowledge the receipt of your letter of the 10th instant relative to the reservation for the Omaha Indians at Black Bird Hills Nebraska Territory.

In reply, I have to answer your inquiries affirmatively, and to state, that it was announced in the last annual Report of this Office, (which may be found in the "Daily Union" of January 19th, 1856) that "the country above the Ayoway, not being satisfactory to the Omaha Indians, and in the judgment of the Department, not suitable for them, they were assigned a reservation for a *permanent home* at the Black Bird Hills in Nebraska Territory, to which they removed in the month of May last."

Very Respectfully,
Your Obedient Servant
George W. Manypenny
Commissioner

To Thomas A. Hendricks
Commissioner of the
General Land Office

General Land Office
March 10th 1856

Hon: George W. Manypenny
Commissioner of Indian Affairs

Sir,

Referring to your letter of the 28th November last transmitting for the information of this office copies of documents therein specified, embracing a map exhibiting the outline of a Reservation for the Omaha Indians at Blackbird Hills as surveyed by Mr. Barnam, I beg leave to inquire:

(1) Whether said location is to be treated and held as the permanent location made under the authority of the proviso in the first article of the Treaty of 16th March 1854 in lieu of the tract situated north of "a line drawn due west from a point in the center of the main channel" of the "Missouri River due east of where the Ayoway river disembogues out of the bluffs, to the western boundary of the Omaha country" and

(2) Whether in virtue of the exchange, the Indian title may be regarded as extinguished to the second tract above mentioned.

This information is wanted to enable us to advise the Surveyor General understandingly in instructions we propose to dispatch to him in the matter. I have the honor to be

Very respectfully
Your Obt. Servt.

Thomas A. Hendricks
Commissioner

Department of the Interior
Office of Indian Affairs
November 28th 1855

Sir:

For your information, I transmit herewith copies of the letter of the 1st September last to this Office from Agent George Hepner and its enclosures, the field notes and map of the Survey of the Omaha Reservation at Blackbird Hills by W. Barnum, surveyor.

Very respectfully
Your Obt. Servant

George Manypenny
Commissioner

Hon: Thomas A. Hendricks
Commissioner of the
General Land Office

Council Bluffs Agency
September 1st 1855

Sir:

I send you field notes and map of the Survey of the Omaha Resrevation at B. B. Hills by Mr. Barnum Surveyor, should he not have made proper return, or notes full he is bound to make the necessary correction.

Respectfully your
Your Obt. Servant

Indian Agent
George Hepner

Col: A. Cumming
Supt. Indian Affairs
St. Louis
Missouri

16.

"Field notes of the boundary of the Omaha Indians Reservation." (Original and Copy)

Completed June 27, 1855

W. Barnum, Surveyor
(Council Bluffs—C-1602-1855)

From "Ancient and Miscellaneous Surveys," vol. 3, pp. 473-480

Field notes of the Boundary of the Omaha Indian reservation.

The Southeast corner is known as the mouth of Woods Creek or the point where said creek empties in the Missouri River, thence running due west six miles two hundred ninety eight rods to the south branch of Blackbird creek, said creek is fifteen feet wide and has a cotton wood sight tree on the east bank of sixteen inches in diameter, thence west six miles one hundred sixty rods to Middle creek, said creek is twenty five feet wide and runs to the south thence west sixteen miles two hundred and two rods to the southwest corner of the reservation and known as a mound two and one half feet in diameter and two feet high with the sod taken from the southside and said mound is further described as being sixteen rods south and sixty rods west of a small branch creek, thence north fifteen miles two hundred sixty rods to Middle creek, said creek is twenty four feet wide and runs to southwest, thence north two miles sixty rods to northwest corner and said corner is known as a mound three feet in diameter and two feet six inches high sod taken from the west thence east seventeen miles two hundred fifty two rods to south

branch of Omaha Creek, said creek is fifteen feet across, thence east three miles two hundred eighty five rods to the Missouri River, thence down said river to place of beginning and containing three hundred thousand acres of land, and said boundary line is further described by having mounds erected on the high ground from eighty rods to one mile apart and so situated as to be visible from one to the other and sod taken from the outside of said line as completed by me the 27th day of June A. D. 1855.

W. Barnum
Surveyor

Department of the Interior
Office of Indian Affairs
May 14th 1855

Cumming, Esq. A.,
Supt., Indian Affairs
St. Louis, Mo.

Sir:

Your letter of the 3rd instant has been received together with the enclosure from Agent Hepner in which he states that he had, on the 16th of April, had a council with the Omaha Indians at which they not only refused to make a selection elsewhere than in the "Black Bird Hills" and refused to go even there until an annuity payment was made to them in money.

On the 9th instant I reported the substance of the Agents communication to the Secretary of the Interior with the remark that though the power to select a country for these people was vested by the Treaty in the President, it appears only their assent was required, not that they had some right to make a choice [several lines illegible] yet to accommodate and placate them he had exercised his authority and acceded to a selection made by themselves although

there were many and strong reasons against it and that still they wished to prescribe conditions before removal. Also that it appeared to me that there was an imperious necessity for confirming the selection made and that the Country indicated therein be proclaimed at the earliest practicable date as their reservation, in consequence of the emigration that is pending in that direction, and I advised that Agent Hepner should be directed to give publicity to the fact of its being so reserved, and as near as might be of the extent of the same which must not however exceed 300,000 acres.

The Secretary has agreed to my recommendation. You are therefore required to instruct Agent Hepner to proceed at once to define the location taking the point known as the "Hills as a nucleus, and when defined require notice in the manner best calculated to render it as public and effective as possible. What are its limits, that such constitute an Indian reservation and that no white person will be permitted to settle within the same.

In laying [illegible line] in mind particularly that it should front upon the river to as limited an extent as is consistent with utility, and in describing the boundary he should proclaim that they extend from a given point upon the river to another point thereupon and then so far as westward or back as will make the number of acres deemed in his judgment sufficient, and compatible with the known wishes of the Indians, which however cannot under Treaty stipulations exceed 300,000 acres, and which should in fact be as much less that amount as will practically suffice.

He should inform the Indians that the money for their removal and subsistence which is considered ample for their present wants, is now in St. Louis subject to his order, and subject to be paid over to him whenever he is satisfied of their disposition to remove. That under no circumstances will an annuity

payment be made until their removal actually takes place, and that he should warn them against listening to the advice of evil disposed and designing white men in this respect, and to assure them that as soon as they do remove the Department will listen to their wishes, and to gratify the same so far as it can legally and consistently with their true interests, do so.

In view of the combination of circumstances which have retarded their removal to this late period, and if they have planted a crop and can peaceably get along with the whites it may not be impolitic to let them remain until the fall of the year, but he should proceed at once as directed in regard to defining their reservation and to arrange for breaking up lands within the same for cultivation; but in the meantime he must impress upon the Indians, that if they do listen to these designing and interested white men and not remove quietly and in peace, the Government will be compelled to force them to do so.

You will also instruct Mr. Hepner that the Department considers it as really necessary that he should reside among the Indians, and expects that he will immediately make his arrangements to do so, likewise when the location is defined, if no accommodations are upon it suitable for a residence, with the understanding that he is to live among them he will submit an estimate for requisite buildings.

Very respectfully
Your Obt. Servant

George W. Manypenny
Commissioner

Department of the Interior
Office of Indian Affairs
May 9th 1855.

McClelland Hon. R.
Secretary of the Interior

Sir

Referring to former communications upon the subject of a permanent location for the Omaha Indians, I have the honor herewith to transmit a copy of a letter from Superintendent Cumming, and of one from Agent Hepner, enclosed by the Superintendent from which you will perceive that the Agent had received my instructions of the 21st March last, which had been approved by you, and says that in compliance with those instructions he had held a council with the Omahas, that they not only refused to make a selection elsewhere than at the Black-Bird Hills, but refused to go even there unless the Government should make them an annuity payment in money and furnished them with protection, etc.

The Treaty provides that they shall have a certain reservation, but if, upon exploration, it be found unsuitable, the President may with the consent of said Indians set apart and assign to them, within or outside of the ceded country, a residence suited for and acceptable to them. In the instructions the agent was told that in addition to the dissatisfaction of the Omahas with their reserve, a military post could not now be established above the Ayoway, consequently it might be considered impolite to remove them thither, but that there were some objections to the selection of a reservation at the Black-Bird Hills—those reasons were very cogent, provided another suitable in soil, timber and water could be obtained. It was suggested that one could possibly be gotten near the Ottoes and Missouriias, and the privilege was given them of selecting in any section of the Country unappropriated North, South or West of the Ottoes and Missouriias, and finally of taking the Black-Bird Hills, if they could not otherwise be satisfied. The President by the Treaty was the person to whom the authority was given to select, but even the authority was waived to accommodate and to please them, and the selection was accordingly made by them of the "Hills,"—which as stated there were objections to their possessing—yet the President had ac-

ceded thereto. They wish now to prescribe the conditions upon which they will consent to remove, and the question is submitted for your consideration and advice as to what action shall be taken.

And I would remark that it does seem to me that there is an imperious necessity for confirming the selection made, and that the country indicated should be proclaimed at the earliest practicable date as their reservation—the emigration that is tending in that direction is so great that in a short time this country will inevitably be to a considerable extent settled by the whites, and serious conflicts must be the result. I would, therefore, recommend that this selection be confirmed, and taken and considered as their future home, and that Agent Hepner be directed to give publicity to the fact of its being so reserved, and as near as may be of the extent of the same; —which is not to exceed 300,000 acres.

Very respectfully
Your Obt. Servant

George W. Manypenny
Commissioner

Hon. R. McClelland
Secretary of the Interior